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# TRADE REFORM ACT OF 1974

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REPORT

OF THE

COMMITTEE ON FINANCE  
UNITED STATES SENATE

TOGETHER WITH ADDITIONAL VIEWS  
ON

H.R. 10710

TO PROMOTE THE DEVELOPMENT OF AN OPEN, NON-  
DISCRIMINATORY, AND FAIR WORLD ECONOMIC SYS-  
TEM, TO STIMULATE THE ECONOMIC GROWTH OF THE  
UNITED STATES AND FOR OTHER PURPOSES



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## TRADE REFORM ACT OF 1974

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Nov. 26, 1974.—Ordered to be printed

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Mr. LONG, from the Committee on Finance, submitted the following

### REPORT

[To accompany H.R. 10710]

The Committee on Finance, to which was referred the bill (H.R. 10710) to promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate the economic growth of the United States, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

(1)



## I. PURPOSES OF THE BILL

The purposes of H.R. 10710, as amended, are:

(1) To authorize the President, for a period of five years, to enter into trade agreements with foreign countries for the purpose of establishing fairness and equity in international trading relations, including (a) the reform of the rules governing international trade, (b) the harmonization, reduction, and elimination of tariff and nontariff barriers to, and other distortions of, international trade, and (c) the securing for the commerce of the United States, on a basis of reciprocity, equal competitive opportunities in foreign markets and to promote the economic growth of, and full employment in, the United States;

(2) To authorize the President to proclaim, subject to certain conditions and limitations, such modifications or continuance of any existing duty, such continuance of existing duty-free or excise treatment, or such additional duties as he determines are required or appropriate to carry out such trade agreements;

(3) To authorize the President to negotiate trade agreements with foreign countries providing for the harmonization, reduction, and elimination of nontariff barriers and other distortions of international trade and to establish constitutionally appropriate procedures for the consideration and implementation of such agreements by the Congress;

(4) To require the President in the exercise of his trade agreement authority to assure reciprocal trade benefits, and in particular fair treatment and equitable market access for exports of the United States, through the full exercise of rights in such agreements, including the reform and revision of the rules of international trade;

(5) To require the President in the exercise of his trade agreement authority to enter into international agreements governing fair and equitable access to supplies of food, raw materials, semi-manufactured and manufactured products;

(6) To require the reporting of the balance of trade of the United States on a cost, insurance, and freight basis;

(7) To provide additional authority to the President temporarily to modify restrictions upon imports into the United States in response to balance of payments disequilibria;

(8) To strengthen the independence of the United States Tariff Commission;

(9) To provide for close and continuing Congressional oversight of international trade negotiations and the implementation and operation of international trade agreements;

(10) To provide greater access and more effective delivery of import relief to industries, firms and workers which are seriously injured or threatened with serious injury by increased imports;

(11) To establish a program of adjustment assistance for communities adversely affected by imports, to expand investment and employment opportunities in such communities, and to improve existing adjustment assistance programs for workers and firms;

(12) To improve procedures for responding to unfair trade practices in the United States and abroad;

(13) To provide for the fullest possible participation in the negotiating process by private sector advisory bodies representing principal segments of the economy affected by international trade;

(14) To authorize the President to extend most-favored-nation (nondiscriminatory) treatment, upon certain conditions, to countries not presently receiving such treatment and to provide adequate safeguards against market disruption by imports into the United States from such countries; and

(15) To authorize the President to extend preferential tariff treatment to the exports of less-developed countries to encourage economic diversification and export development within the developing world.

## II. GENERAL STATEMENT

The Trade Reform Act of 1974, which the Committee on Finance now reports to the Senate with amendments, coincides with a serious crisis in the domestic and world economies. Twenty months have passed since former President Nixon requested the Congress to provide the Executive with authority to negotiate "a more open and equitable trading world." Events during the past year have severely strained the world's economy, underscoring the need to find cooperative solutions to common domestic and international economic problems. President Ford has renewed the request for enactment of trade reform legislation during the 93d Congress to permit multilateral trade negotiations to proceed. Trade negotiations are urgently needed to promote fairness and equity in the international trading system and to prevent a serious deterioration in the spirit of economic cooperation that is essential for the preservation of economic and political stability in a rapidly changing world.

### U.S. Trade, Balance of Payments Trends

The value of world exports increased from \$129.6 billion in 1960 to \$575 billion in 1973. Normally, such a four-fold increase would suggest a growing world interdependence and a more efficient utilization of world resources. Unfortunately, however, much of the increasing volume of trade was attributable to inflation and occurred within preferential and discriminatory trading arrangements. For example, among the contracting parties to the General Agreement on Tariffs and Trade (the GATT)—despite their pledge of nondiscrimination as a fundamental principle for achieving trade liberalization—the proportion of imports entering at preferential rates increased from 10 percent in 1955 to 25 percent in 1970, and the proportion will grow significantly with the enlargement of the European Community.

One result of discriminatory trade practices has been a decline in the U.S. share of world trade. While the value of free world exports more than quadrupled between 1960 and 1973, the U.S. share underwent a steady decline from 15.9 percent in 1960, to 14.6 percent in 1965, and to 12.4 percent in 1973, as illustrated by the following table:



TABLE 1.—WORLD TRADE: EXPORTS <sup>1</sup>

	1960	1965	1973
Total (billions of dollars).....	129.6	188.5	575.0
Per country (percentage):			
United States.....	15.9	14.6	12.4
European Community.....	32.6	34.3	36.8
Of which: United Kingdom.....	8.2	7.3	5.3
Japan.....	3.2	4.5	6.4
Other Developed Countries.....	15.0	15.4	15.8
Less Developed Countries.....	20.8	18.9	18.6
Communist Countries.....	12.5	12.3	<sup>2</sup> 9.9
Of which:			
China, People's Republic of (P.R.C.).....	1.5	1.1	.5
Soviet Union (U.S.S.R.).....	4.3	4.4	3.7
Other.....	6.6	6.8	<sup>2</sup> 5.7

<sup>1</sup> Data are f.o.b.<sup>2</sup> Estimated.

Source: International Economic Report of the President, February 1974. U.S. Department of Commerce.

During the same period, the U.S. share of world imports fluctuated between 12.1 percent in 1960 and 12.4 percent in 1973. (See Table 2.) U.S. imports totalled \$73.2 billion in 1973, and were entering at an annual rate of approximately \$100 billion during the first half of 1974.

TABLE 2.—WORLD TRADE: IMPORTS<sup>1</sup>

	1960	1965	1973
Total (billions of dollars).....	135.8	198.7	592.0
Per country (percentage):			
United States.....	12.1	11.7	12.4
European Community.....	33.2	34.8	36.5
Of which: United Kingdom.....	9.6	8.1	6.6
Japan.....	3.3	4.1	6.5
Other Developed Countries.....	17.5	18.8	17.6
Less Developed Countries.....	21.8	18.9	16.3
Communist Countries.....	12.1	11.6	<sup>2</sup> 10.8
Of which:			
China, People's Republic of (P.R.C.).....	1.5	.9	<sup>2</sup> .6
Soviet Union (U.S.S.R.).....	4.1	4.1	3.9
Other.....	6.5	6.6	<sup>2</sup> 6.3

<sup>1</sup> Data are c.i.f.<sup>2</sup> Estimated.

Source: International Economic Report of the President, February 1974. U.S. Department of Commerce.

The performance of the United States in the world economy throughout much of the postwar period has been marked by persistent trade and payments deficits. The performance since 1960 is shown in Table 3 below. Measured on the most accurate and meaningful basis, which would include the cost of insurance and freight in the value of our imports and exclude the soft-currency and other foreign-aid-financed shipments from the value of our exports, our trade account has been in deficit since 1966. In 1974, our trade deficit, measured on a c.i.f. basis, is running at an annual rate of almost \$12 billion. These recent trade deficits have accounted for over one-half of our overall payments deficits, as shown in Table 5.

Government expenditures abroad have also been a large contributor to the deficits in our international accounts. Between 1950 and 1973 *net* government expenditures for both military and economic aid caused a drain of \$141.3 billion in our overall international accounts (see Table 4 below), which is about equal to the growth in foreign country monetary reserve assets over this period.

Trade policies cannot be divorced from other important contributions to, or influences on, the U.S. and world economies. This legislation would give the President authority to negotiate structural changes in the world's trading system. It is intended that these negotiations be coordinated with other negotiations involving the burden-sharing of aid and defense costs, monetary reform, and other issues. Trade cannot be adequately dealt with in isolation from other major influences on the world economy.

TABLE 3.—U.S. TRADE AND BALANCE OF PAYMENTS, 1960-74  
[In billions of dollars]

	U.S. trade position			Trade balance		Balance of payments		
	Exports (X)		Imports (M)		C.i.f. (M) excluding foreign aid (X)	Official settle- ments <sup>2</sup>	Liquidity <sup>2</sup>	Basic balance
	Total	Minus foreign aid	F.o.b.	C.i.f. <sup>1</sup>				
1960.....	19.7	18.0	15.1	16.3	1.7	-3.7	-3.4	-1.2
1961.....	20.2	18.5	14.8	16.0	2.5	-2.3	-1.3	( <sup>3</sup> )
1962.....	21.0	18.9	16.5	17.8	1.1	-2.9	-2.6	-1.0
1963.....	22.5	20.0	17.2	18.6	1.4	-2.7	-1.9	-1.3
1964.....	25.8	23.1	18.7	20.3	2.8	-2.7	-1.5	-1.1
1965.....	26.7	24.3	21.4	23.2	1.1	-2.5	-1.3	-1.8
1966.....	29.5	27.0	25.6	27.7	-.7	-2.2	.2	-2.1
1967.....	31.0	28.5	26.9	28.8	-.3	-4.7	-3.4	-3.7
1968.....	34.1	31.8	33.2	35.3	-3.5	-1.6	-1.6	-1.9
1969.....	37.3	35.3	36.0	38.2	-2.9	-6.1	2.7	-3.6

1970.....	42.7	40.7	40.0	42.4	2.7	-1.7	-3.9	-9.8	-3.8
1971.....	43.5	41.7	45.6	48.3	-2.0	-6.6	-22.0	-29.8	-10.6
1972.....	49.2	47.5	55.6	58.9	-6.4	-11.4	-13.9	-10.4	-11.2
1973.....	70.8	69.4	69.5	73.2	1.7	-3.8	-7.8	-5.3	-1.9
1974:									
I.....	22.4	{	21.7	23.2	-7	-4.6	-1.0	1.1	1.7
II.....	24.2		25.2	27.0	-9	{	-6.2	-4.5	-2.7
III.....	25.0		27.1	29.0	-2.1		( <sup>4</sup> )	( <sup>4</sup> )	( <sup>4</sup> )

<sup>1</sup> C.i.f. imports for the years 1960-66 are assumed to be roughly equivalent to 108.3 percent of f.o.b. imports in accordance with a Bureau of Customs-Tariff Commission-Bureau of Census study based on 1966 arrivals. For the years 1967-73 estimates are based on Bureau of Customs-Bureau of Census studies showing estimated freight and insurance charges to be 6.9 percent (1967), 6.3 percent (1968), 6.1 percent (1969), 6.2 percent (1970), 6.1 percent (1971), and 5.9 percent for 1972 and 1973.

<sup>2</sup> The liquidity and official settlements deficits for 1966-73 excludes SDR allocations.

<sup>3</sup> Less than \$50 million.

<sup>4</sup> Not available.

<sup>5</sup> Partly estimated.

Source: U.S. Department of Commerce.

TABLE 4.—NET U.S. GOVERNMENT AID AND MILITARY EXPENDITURES ABROAD, 1950-1974

(Billion U.S. dollars)

	Military	Foreign aid	Total
1950.....	-0.6	-3.6	-4.2
1951.....	-1.3	-2.9	-4.2
1952.....	-2.1	-2.5	-4.5
1953.....	-2.4	-2.1	-4.5
1954.....	-2.5	-1.6	-4.1
1955.....	-2.7	-2.2	-4.9
1956.....	-2.8	-2.4	-5.2
1957.....	-2.8	-2.6	-5.4
1958.....	-3.1	-2.6	-5.7
1959.....	-2.8	-2.2	-5.0
1960.....	-2.8	-2.6	-5.4
1961.....	-2.6	-2.8	-5.4
1962.....	-2.4	-2.8	-5.2
1963.....	-2.3	-3.1	-5.4
1964.....	-2.1	-3.2	-5.3
1965.....	-2.1	-3.3	-5.4
1966.....	-2.9	-3.4	-6.3
1967.....	-3.1	-4.2	-7.3
1968.....	-3.1	-3.9	-7.0
1969.....	-3.3	-3.6	-6.9
1970.....	-3.4	-3.8	-7.2
1971.....	-2.9	-4.4	-7.3
1972.....	-3.5	-3.5	-7.0
1973.....	-2.4	-3.8	-6.2
1974 <sup>1</sup> .....	-2.3	-4.4	-6.7
Total.....	-64.3	-77.0	-141.3

<sup>1</sup> First half at annual rate.

Source: International Economic Report of the President, February 1974. U.S. Department of Commerce.

U.S. trade policy has not been noted for its coherence or consistency. Throughout most of the postwar era, U.S. trade policy has been the orphan of U.S. foreign policy. Too often the Executive has granted trade concessions to accomplish political objectives. Rather than conducting U.S. international economic relations on sound economic and commercial principles, the Executive has used trade and monetary policy in a foreign aid context. An example has been the Executive's unwillingness to enforce U.S. trade statutes in response to foreign unfair trade practices. By pursuing a soft trade policy, by refusing to strike swiftly and surely at foreign unfair trade practices, the Executive has actually fostered the proliferation of barriers to international commerce. The result of this misguided policy has been to permit and even to encourage discriminatory trading arrangements among trading nations.

For many years this country relied on a trade surplus to offset foreign aid, military expenditures abroad, as well as overseas private investment. That surplus, which was never large enough to offset such expenditures, has now disappeared. In 1962, the Nation had a modest trade surplus of approximately \$1.1 billion (c.i.f.) and a balance of payments deficit of \$2.9 billion (liquidity basis). Ten years later the modest trade surplus had become an \$11 billion deficit, and the payments deficit had grown from a bearable \$2.9 billion to an intolerable \$13.9 billion. Not surprisingly, the dollar had become unwelcome in many of the capitals of the world and underwent a series of devaluations.

In 1973 there was a temporary improvement in U.S. payments and trade balances (largely attributable to grain exports to the Soviet Union which many believe contributed importantly to the 8.8 percent inflation of 1973). Hopes for achieving a reasonable balance in our international accounts this year have been dashed by mounting deficits attributable to the increased cost of oil imports. In 1974, the United States will spend approximately \$27 billion on oil imports; by the year's end, the Nation's trade deficit (c.i.f.) will be well over \$10 billion.

Throughout the postwar years, the United States has, in effect, premised much of its trade, aid, and monetary policies upon a balance of trade surplus which, in fact, was diminishing and by 1966 had disappeared altogether. The apparent U.S. trade surplus was based on import statistics collected and reported on an f.o.b. (free on board) basis, which excludes the cost of freight and insurance. U.S. export statistics, moreover, are padded with exports that are more in the nature of aid than trade (Public Law 480 exports, for example). Most other industrialized nations and the International Monetary Fund value imports on a c.i.f. (cost, insurance and freight) basis. However, the United States has obscured its true balance of trade position by maintaining statistics on an f.o.b. rather than c.i.f. basis, as shown in the following table:

TABLE 5.—BALANCES OF TRADE: F.O.B. AND C.I.F.  
AND BALANCE OF PAYMENTS

[In billions of dollars]

Year	F.o.b. (plus foreign aid shipments)	C.i.f. (minus foreign aid)	Balance of payments (net liquidity)
1966.....	3.9	-0.7	-2.2
1967.....	4.1	-.3	-4.7
1968.....	.8	-3.5	-1.6
1969.....	1.3	-2.9	-6.1
1970.....	2.7	-1.7	-3.9
1971.....	-2.0	-6.6	-22.0
1972.....	-6.4	-11.4	-13.9
1973.....	+1.3	-3.8	-7.8
1974 (1st 9 months at annual rate).....	-3.1	<sup>1</sup> -11.9	<sup>2</sup> -14.4
1966-74.....	+2.6	-42.8	-76.5

<sup>1</sup> Partly estimated.

<sup>2</sup> January-June at annual rate.

Source: U.S. Department of Commerce.

The table illustrates that although the U.S. Government reported to the American people and to the world a healthy balance of trade surplus of \$2.6 billion for the period 1966-74, the country in reality experienced a deficit totaling \$42.8 billion. The Special Representative for Trade Negotiations has assured the Committee that it is his intention to conduct future negotiations utilizing c.i.f. statistics. It is the Committee's intention in this legislation to assure that the c.i.f. method of valuing imports be the principal statistical method for all other agencies of the Federal Government as well. It is essential that the United States enter future trade negotiations with an accurate public understanding of its actual trade balance.

### Changes in the Structure of the World Economy

The U.S. and other economies have passed through several phases during the post-World War II era. In the early postwar years, the U.S. economy, which had been relatively unscathed by the ravages of war, was pre-eminent among the economies of the world. The United States accordingly adopted a foreign economic policy to foster the recovery of war-torn nations. This policy of the United States succeeded, and the world's economic landscape underwent permanent change.

During the early 1960's the U.S. economy itself moved from stagnation to respectable growth without significant inflation. Beginning in 1965 an inflationary trend developed which has grown progressively worse. Inflation in the United States has now reached a level unprecedented in peacetime. The causes of the inflation are deep-seated. A series of the largest budget deficits since World War II have been a

factor; on-again, off-again monetary policy has been another. Tight money policies may be highly inflationary *per se*.

Endemic inflation led to extraordinary balance of trade and payments deficits between 1970 and 1972 which in turn created a massive run against the dollar. After the U.S. could no longer maintain a fixed parity between the dollar and gold, the fixed exchange rate structure collapsed on August 15, 1971. Several dollar devaluations have occurred since that date. By making imports more expensive and exports relatively less expensive, the dollar devaluations contributed significantly to the inflationary pressures in the economy, creating shortages of raw materials and leading to the imposition of export controls on these products for which the U.S. enjoys its largest comparative advantage (e.g., soybeans).

As the U.S. economy underwent significant internal changes during the 1960's and early 1970's, the U.S. economic pre-eminence in the world economy declined relative to Western Europe and Japan. The European Community, born in 1958 in the Treaty of Rome, has become the world's largest trading bloc, with exports and imports now exceeding \$300 billion. The Community's share of world GNP, world trade and world reserve assets has grown markedly since the 1960's, and this trend has accelerated in the 1970's.

The growth of the Japanese economy has outstripped even that of the European Community. Real growth in Japan grew at the phenomenal rate of 10.5 percent a year for the period of 1960 through 1972, as compared with 5.0 percent in Italy, 4.5 percent in West Germany, 4.1 percent in the United States, and 2.7 percent in the United Kingdom. By almost every economic indicator of growth, Japan has been the world leader. In terms of military or tax burdens, however, Japan is at the bottom of the list. The Achilles heel of the Japanese economy—the overwhelming dependence of Japan on foreign oil—has interrupted Japan's record of remarkable economic growth.

Less-developed countries (LDC's) as a whole progressed fairly well during the 1960's in terms of their economic growth and their balances of trade and payments performance. Between 1960 and 1972, real economic growth in the LDC's averaged over the 5 percent goal set for the "decade of development." By the fall of 1973, these countries had accumulated \$40.6 billion in international reserve assets compared to \$10 billion in 1960. By the end of this year the international reserve assets of "LDC's" may exceed \$100 billion. These overall figures, however, mask wide divergence in performance. Oil-producing "LDC's" are holding western economies at bay through massive price increases. Other LDC's also possessing important natural deposits have been attempting to form their own producers' cartels to obtain a maximum rate of return on their resources. Those LDC's without such strategic resources are facing financial collapse.

### **The Energy Challenge**

In the recent past, a major cause of inflation has been the rapid rise in energy prices created by the cartel-pricing policies of the OPEC countries. Between October 1973 and January 1974 oil producing countries in the Middle East raised their government oil revenues (taxes and royalties) from about \$3.00 per barrel to \$7.00 per barrel. Imported petroleum currently costs over \$13.00 per barrel. The U.S.



oil import bill in 1974 is expected to be over \$27 billion, a 300 percent increase over 1973, for virtually the same volume of oil. Net income of the oil producing countries of the Middle East has increased from \$4 billion in 1967, to \$9 billion in 1972, and to an estimated \$60 billion in 1974. World imports of petroleum at present consumption levels will jump from \$45 billion in 1973 to about \$115 billion in 1974, an increase of \$70 billion. Oil exporting countries' revenues will increase in 1974 to nearly \$100 billion, three-and-one-half times the 1973 levels. By 1980, it is projected that OPEC countries will control over \$500 billion or 70 percent of the world's foreign exchange reserves. This unprecedented transfer of wealth from the oil-consuming countries to the oil-producing countries is severely straining the world's monetary and trading systems, as nations struggle to pay their oil import bills. It is also posing a serious threat to private financial institutions.

Petroleum is the largest single commodity moving in world trade—accounting for approximately one-fifth of the total value of world trade, and its continued dominance is assured because of the cartel-pricing policies of the producing countries. Other producer cartels of lesser, but still significant, economic strength have also been formed. Under these circumstances, it is imperative that the fundamental inequities in the world trading system be corrected in a spirit of international cooperation.

The abruptness of the price increase in petroleum is a primary cause of the present paradox of inflation and recession which burdens the United States and the world economy. The increase in the price of this basic commodity has already been, and will continue to be, reflected in the price of other goods which depend on petroleum as either a direct raw material or as a fuel. Furthermore, the increase in the price of petroleum has put corresponding pressure on the prices of other fuels, raw materials, and finished products so that virtually every sector of the economies of oil consuming nations is affected to some degree. Consequently, as consumers try to maintain their standard of living by shifting their spending patterns, some industries are already facing weakened demand for their products, increasing inventories, production curtailment, reduced profits and job layoffs.

### **Why This Bill Is Necessary**

Article I, Section 8 of the Constitution vests in the Congress plenary authority to "lay and collect taxes, duties, imposts" and to "regulate commerce with foreign nations." Since 1934, Congress has periodically delegated to the President specific and limited authority to conduct negotiations with other countries for reciprocal tariff and trade concessions. The last major delegation of such authority to the Executive, which expired in 1967, was included in the Trade Expansion Act of 1962. The Trade Reform Act of 1974 proposes a five-year renewal of the President's authority to engage in another round of multi-lateral trade negotiations.

As passed by the House, the bill represented the largest delegation of trade negotiating authority to the Executive in history. The Finance Committee's amendments seek to establish appropriate and constitutionally-sound guidelines and criteria to govern the exercise of the authority granted by the bill. The intractable nature of modern

barriers to trade, both tariff and nontariff, make this grant of extensive negotiating authority to the Executive necessary. The Committee, moreover, fully recognizes that immediate steps must be taken to deal with the severe monetary and trade problems created by the precipitous increase in world energy prices and to avert further dislocations in the world economy.

Twelve years have passed since the Congress enacted the Trade Expansion Act of 1962. A great amount of international economic history has occurred in the intervening years. In the opinion of the Committee, much of that history has been unfavorable to this country, largely because of the antiquated rules of the international trade and monetary systems and the related lack of genuine cooperation and reciprocity in international economic relations.

The Kennedy Round of trade negotiations brought about some of the largest tariff reductions in the history of the United States. Unfortunately, the Kennedy Round did not remedy fundamental inequities in the world trading system. There was no reform of the institutional structure, nor was there any significant progress in dealing with nontariff barriers or distortions of international trade. Our trading partners, most notably the European Community, devised new ways to pursue protectionism, particularly in agriculture.

In recent years, the United States has experienced a series of trade and payments deficits, several dollar devaluations, and a rate of inflation unprecedented in peacetime. The Nation's economy has continued its long, slow drift away from labor intensive industries and toward service industries. Especially significant has been the shift in the structure of U.S. employment (Table 6). In 1960, nearly one-third of our U.S. nonagricultural employment was in manufacturing. Since 1960, however, manufacturing employment has declined steadily to a position where barely one in four workers is gainfully employed in manufacturing. This relative decline in manufacturing employment has been offset by increases in service jobs.

As our Nation's employment in manufacturing has declined relatively, its trade balance in manufacturing has declined absolutely. In 1960 the United States had a trade surplus in manufactured goods of \$5.2 billion. By 1973 we had a deficit of \$3.4 billion (Table 7). In contrast, West Germany also had a surplus of \$5.9 billion in 1960, but by 1973 that surplus had burgeoned to \$28.7 billion, and Japan's modest surplus of \$2.6 billion in 1960 also exploded into a \$23.3 billion surplus by 1973. The Committee expects that these negotiations will seek to provide equal competitive opportunities for exports of U.S. manufactures and agriculture, and that the unwarranted protection afforded to producers in countries with large and persistent balance of trade surpluses will be substantially reduced and, if possible, eliminated.

TABLE 6.—EMPLOYMENT IN THE UNITED STATES IN NONAGRICULTURAL ESTABLISHMENTS DURING THE POSTWAR ERA 1945-74  
[In millions of persons]

	Manufacturing			Mining	Construc- tion	Transport public utilities	Wholesale and retail trade	Finance, insur- ance, and real estate	Government		
	Total wage and salary workers	Total	Percent of total employ- ment						Services	Federal	State and local
1945.....	40.4	15.5	38.4	0.8	1.1	3.9	7.3	1.5	4.2	2.8	3.1
1950.....	45.2	15.2	33.7	.9	2.3	4.0	9.4	1.9	5.3	1.9	4.1
1955.....	50.7	16.9	33.3	.8	2.8	4.1	10.5	2.3	6.3	2.2	4.7
1960.....	54.2	16.8	31.0	.7	2.9	4.0	11.4	2.7	7.4	2.3	6.1
1965.....	60.8	18.1	29.7	.6	3.2	4.0	12.7	3.0	9.1	2.4	7.7
1970.....	70.6	19.4	27.4	.6	3.4	4.5	14.9	3.7	11.6	2.7	9.8
1972.....	72.8	18.9	26.0	.6	3.5	4.5	15.7	3.9	12.3	2.6	10.6
1973.....	75.6	19.8	26.2	.6	3.6	4.6	16.3	4.1	12.9	2.6	11.0
1974: I.....	76.8	19.9	25.9	.7	3.7	4.7	16.5	4.1	13.2	2.7	11.4
II.....	77.1	20.0	25.9	.7	3.6	4.7	16.6	4.1	13.4	2.7	11.4
III <sup>a</sup> .....	77.1	19.9	25.8	.7	3.5	4.6	16.7	4.2	13.4	2.7	11.5

<sup>a</sup> Preliminary.

Source: "Economic Report of the President", February 1974, p. 282; Current Economic Indicators.

TABLE 7.—TRADE BALANCES IN MANUFACTURES (C.I.F. BASIS)  
[Dollars in billions]

Year	EEC		United States	Federal Republic of Germany	France	United Kingdom	Japan	Canada <sup>1</sup>
	Total	Excluding Intra-EEC						
1960.....	\$13.0	\$13.1	\$5.9	\$5.9	\$2.7	\$4.4	\$2.6	-\$1.5
1966.....	16.9	17.0	5.1	9.0	1.6	5.4	7.0	-2.1
1967.....	17.9	17.8	5.3	11.0	1.4	4.3	6.7	-2.0
1968.....	18.9	18.9	3.5	11.7	1.0	3.9	8.7	-1.7
1969.....	19.4	19.7	4.1	12.3	.1	5.1	10.6	-2.2
1970.....	21.5	21.6	3.8	13.3	1.5	5.3	12.5	-1.0
1971.....	26.4	27.4	.4	15.0	1.8	6.3	17.1	-2.1
1972.....	39.5	30.4	-3.4	17.7	3.4	5.4	20.3	-5.9
1973.....	N.A.	N.A.	-8	28.7	2.3	3.7	23.3	-4.9

<sup>1</sup> F.o.b. basis.

N.A. Not available.

Source: U.S. Department of Commerce.

The Committee recognizes that the United States, by virtue of its strength, must play a major role in leading the world and shaping its economy. The strength of the American economy made it possible for this country to assert such leadership with the expectation and hope that other countries would follow. However, while it is necessary that the United States continue a leadership role, other countries which have gained tremendous financial or economic wealth must do their fair share to insure stability in the world economy. Several major trading countries which have large trade and payments surpluses continue to maintain unjustifiable and unreasonable restrictions on imports and investment even though they enjoy relatively strong economies.

No nation is so insulated from the world economy that it can afford to pursue policies which threaten the stability of the world economy without suffering itself from the resulting chaos. Collective economic security and access to supplies must be primary objectives of these negotiations.

The Trade Reform Act, as reported by the Committee, is intended to be more than a delegation of authority for negotiated reduction in the rates of duty. While a significant authority to reduce tariffs would be provided to insure the flexibility the trade negotiations will require, our foreign trading partners and our negotiators are on notice that the authority must be exercised to obtain full reciprocity and equal competitive opportunities for U.S. commerce. A complete prenegotiation procedure would be provided to avoid substantial duty reductions in import-sensitive industries. U.S. businessmen would be given the same access to the U.S. negotiating team that businessmen in other countries have to theirs.

The basic authority for trade agreements in the Trade Reform Act, however, would be but one part of new trade management tools designed to open a new era of U.S. participation in the world economy. For the first time, an assault on nontariff barriers would be mandated and a constitutionally-sound procedure for Congressional consideration of the resulting agreements is provided. Outmoded international trade rules would be replaced and new codes providing for a fair and equitable access to supplies would be sought. U.S. legislation dealing with unfair trade practices would be strengthened. Reciprocal, nondiscriminatory treatment for commerce between the United States and other industrialized countries would be required; at the same time, those less developed countries which do not discriminate against U.S. commerce or withhold needed materials from the world economy would receive a preferential treatment designed to stimulate their development through trade rather than aid.

The Committee bill provides a new program of community assistance specifically designed to help those communities adversely impacted by trade to adjust to foreign competition.

In short, the Trade Reform Act, as modified by the Committee, is designed to avoid the pitfalls of past trade agreements programs and to give U.S. negotiators the authority needed to deal with a world of proliferating preferential trade blocs, cartels, and disruptive influences.

The United States remains the largest and most accessible market in the world. Despite the claims of our trade partners, U.S. duties,

subject to continued reductions under the trade agreement programs, are at the lowest average level of any major industrialized country. The United States accordingly is the world's largest individual market. The value of its foreign imports now exceeds \$100 billion annually. America is a trading nation, and it thrives on competition. Given a fair deal, its industry can compete with the world, and be strengthened in that competition.

The Committee, however, believes that the United States can no longer afford to stand by and expose its markets, while other nations shelter their economies—often in violation of international agreements—with variable levies, export subsidies, import equalization fees, border taxes, cartels, discriminatory government procurement practices, import quotas, and a host of other practices which effectively discriminate against U.S. trade and production. The Committee recognizes the responsibilities of the United States, as the world's strongest economy, to provide leadership in the international community. At the same time, however, the Committee recognizes the duty of the Federal Government to adopt policies for the sound growth of the economy and the long-term benefit of the American people. The Committee therefore reports the Trade Reform Act of 1974, having received firm assurances from the Executive Branch that in the forthcoming negotiations, U.S. negotiators will not grant concessions which are not fully reciprocated by foreign concessions of equivalent value to the commerce of the United States.



### III. PRINCIPAL FEATURES OF THE BILL

#### Title I. Negotiating Authority

*General Authority.*—The bill, as amended by the Committee, would authorize the Executive for a period of five years to enter into trade agreements with other countries, for the purpose of harmonizing, reducing, or eliminating tariff and nontariff barriers to, and other distortions of, international trade, subject to certain limitations and conditions. The Committee bill gives strong emphasis to the need for establishing fair and equitable conditions of trade, and includes a requirement that the President determine, at the conclusion of the negotiations, whether any major industrialized country has failed to make concessions which would provide for the commerce of the United States substantially equivalent competitive opportunities provided by the United States to such country. Any major industrialized country which fails to provide such substantially equivalent market opportunities would not benefit from the concessions made under authorities provided by this bill, and, if necessary to restore relatively equivalent competitive opportunities, concessions made under past trade agreements could be terminated.

*Tariff Authority* (Title I, Ch. 1).—In order to promote the purposes of the bill, detailed in section 2 and in the negotiating objectives set forth in various sections of Title I, the President would be authorized to proclaim, in accord with certain limits described below, modifications in duties whenever he determines that existing duties or other import restrictions of a foreign country or of the United States are unduly burdening and restricting the foreign trade of the United States. The President would be authorized to *decrease* duties below the rates in effect on January 1, 1975, within the following limitations:

If existing duties are:

- 10% ad valorem or less—no limitation;
- over 10% ad valorem—50% of the rate existing on January 1, 1975.

The bill would establish certain prenegotiation procedures, including public hearings and advice by the Tariff Commission (renamed the United States International Trade Commission), to assess the probable economic effect of such potential duty reductions on industries producing like or directly competitive articles and on consumers for the purpose of avoiding serious injury to the U.S. economy. In addition, private advisory groups would be established to provide the negotiators with policy and technical advice prior to, and throughout, the negotiations.

Negotiated duty reductions which exceed ten percent of the prior rate would be staged over a period of time as follows:

1. Whenever a duty is to be reduced by more than 20 percentage points, the reduction would occur in equal installments over a period of 10 years.
2. Whenever a duty is to be reduced by less than 20 percentage points, the annual reduction could not exceed 2 percent ad valorem.



The President would be authorized, as part of negotiated trade agreements, to *increase* (or impose) rates of duties not to exceed 50% above the column 2 rate existing on January 1, 1975, or 20% *ad valorem* above the rate existing on January 1, 1975, whichever is higher.

*Nontariff Barriers* (Title I, Ch. 1).—The President would be authorized to enter into trade agreements to harmonize, reduce, or eliminate nontariff barriers and distortions, including subsidies, to international trade in goods and services which he determines are unduly burdening or restricting the foreign commerce of the United States, adversely affecting the U.S. economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations.

At least 90 days before entering into such a trade agreement under section 102 of the bill, the President would be required to notify the House and Senate and publish notice of his intention in the Federal Register. The President or his representative would also be required to consult in advance with appropriate committees of the Congress concerning the agreements and their "packaging" for submission to Congress. All agreements involving nontariff barriers and distortions, together with a draft of any necessary implementing legislation and a statement of any administrative action proposed to implement the agreement, must be submitted to the Congress for consideration. Thus the Congress and the American people would have an understanding of the ramifications of such trade agreements before they could become effective.

In order to assure that the Congress would consider such legislation, while at the same time preserving the constitutional powers vested in the Congress, the bill provides special procedures for considering implementing legislation. If, forty-five legislative days after implementing legislation has been introduced, the committee (or committees) to which the matter had been referred has not already reported the legislation, the committee (or committees) would be discharged from further consideration. A vote on final passage of the implementing legislation would be taken in each House on or before the close of the 15th day after the bill or resolution is reported by the committee or committees to which it was referred, or after they have been discharged from further consideration of the bill or resolution. No amendments would be allowed. In the case of revenue bills, which must originate in the House of Representatives, each House would be given up to 60 days in which to consider agreements (for a total of up to 120 legislative days). Under the Committee bill, both Houses must approve such implementing legislation, by majority vote of the members present and voting, before agreements negotiated under section 102 of Title I can enter into force for the United States.

*Negotiating Objectives* (Title I, Ch. 1).—The overall negotiating objective of the United States under the bill would be to obtain more open and equitable market access for U.S. exports of goods and services and to harmonize, reduce and eliminate barriers to international trade.

The bill would also make it a principal U.S. negotiating objective to obtain, to the maximum extent feasible, with respect to appropriate sectors of manufacturing and with respect to the agricultural sector, competitive opportunities for United States exports to developed

countries equivalent to competitive opportunities afforded similar products in United States markets. U.S. negotiators would be directed to obtain, to the maximum extent feasible, equivalent competitive opportunities within sectors (e.g., bargaining U.S. import concessions within one sector of manufacturing for foreign concessions resulting in equivalent market opportunities for U.S. exporters in that sector). The private advisory bodies would advise the negotiators on how the goal can best be accomplished. The Special Representative for Trade Negotiations would be required to account to the Congress and the public on how successful he was in achieving this negotiating objective. Private sector advisory committees, established by the Committee bill, would issue formal reports at the conclusion of agreements affecting their sectors, evaluating the equity and mutuality of the agreements within their sectors. The Congress therefore would be better able to judge whether this negotiation achieved mutual benefits for the commerce of the United States.

A further negotiating objective of the United States in the nontariff barrier negotiations would be to obtain international safeguard procedures designed to permit the use of temporary measures to ease the adjustment to change brought about by the effect of such negotiations upon the growth of international trade.

The Committee bill would establish as a principal negotiating objective, the entering into of trade agreements with any foreign country or group of countries which supply the United States with articles of commerce which are essential for U.S. economic requirements, and for which the United States does not have, or cannot easily develop, the necessary productive capacity to supply its own requirements.

The Committee bill would authorize and encourage the President to enter into bilateral trade agreements where such agreements would better serve U.S. economic interests than agreements undertaken on a multilateral basis. In addition, the Committee bill would direct the President to enter into a trade agreement with Canada aimed at eliminating or moving to eliminate trade barriers between the two countries on a reciprocal basis.

*Reform of the General Agreement on Tariffs and Trade (GATT)* (Title I, Ch. 2).—The bill would direct the President to seek reform of the GATT (or through negotiation of other agreements) to establish principles promoting the development of an open, nondiscriminatory and fair world economic system. Such principles would include: (1) revision of decision-making procedures of the GATT, (2) expansion of the safeguard provision (Article XIX) to cover all forms of import restraints countries use in response to injurious competition, (3) extension of the Agreement to matters not presently covered to move toward fair trade practices, (4) the adoption of international fair labor standards, (5) revision of the Agreement with respect to the treatment of border adjustments for internal taxes, (6) revision of the Agreement to recognize import surcharges as the preferred response to balance of payments deficits, (7) strengthening of the Agreement to assure access to supplies including rules and procedures governing imposition of export controls, the denial of fair and equitable access to such supplies, and effective consultation procedures, (8) the establishment of multilateral procedures and sanctions with respect to such countries which deny fair and equitable access to supplies of food, raw materials, semi-manufactured and manufactured commodities, and thereby injure the international

community, (9) establishment of international procedures for regular consultation among countries regarding international trade and the resolution of commercial disputes, (10) any revisions necessary to apply principles of reciprocity and nondiscrimination including elimination of special preferences and reverse preferences, (11) any revision necessary to establish more flexible international monetary mechanisms, (12) any revisions necessary to define acceptable forms of subsidy to industries producing products for export and to attract foreign investment, and (13) any revisions necessary to establish agreement on the extraterritorial application of national laws relating to antitrust, taxation, and foreign trade.

The Committee bill would require that any trade agreement entered into by the President which would change domestic Federal law (or materially change administrative regulations) would not take effect unless implementing legislation was approved by both Houses of Congress.

*Balance of Payments Authority* (Title I, Section 122).—The bill would direct the President to proclaim, for a period of up to 180 days, such import surcharges (up to 15 percent ad valorem) or, under certain circumstances, import quotas, or a combination of the two, as may be necessary to deal with large and serious U.S. balance of payments deficits, to prevent an imminent and significant depreciation of the dollar, or to cooperate with other countries in correcting international balance of payments disequilibria. If the President fails to take action to protect the United States from continuing, large and serious balance of payments deficits, he would be required to consult with the members of the Committee on Finance and the Committee on Ways and Means.

If the President determines that the United States has experienced large, persistent, real trade surpluses, which require an increase in U.S. imports, he would be authorized to proclaim for a period of up to 150 days, a temporary reduction in the rate of duty of not more than 5 percent ad valorem on any article or an increase in quotas or a temporary suspension of other import restrictions.

Import restrictions would be applied on a nondiscriminatory basis, unless the President determines that circumstances warrant restrictions on imports from individual countries. Such circumstances could include situations in which the large and serious U.S. balance-of-payments deficits are substantially the result of one or several countries having large surpluses and failing to take voluntary and effective action to reduce those surpluses. (It is the Committee's intention that wherever United States trade performance is measured to reach determinations under authorities granted by the bill, the Executive is to assay and publish the U.S. balance of trade on a c.i.f. basis. The c.i.f. basis would, with respect to imports, include the cost of insurance, and freight, and would exclude soft currency sales, long-term foreign-aid-financed shipments, and outright grants from export totals.)

*Hearings and Advice Concerning Negotiations* (Title I, Ch. 3).—The bill contains a number of provisions intended to increase the participation of the public, the Congress, and various governmental agencies in the trade agreements program. The role of the Tariff Commission (renamed the International Trade Commission) as a fact-finder and

advisor would be expanded and the Commission would be made more independent of the Executive. In addition, the bill would establish various private advisory groups representing labor, industry, agriculture, consumers and the general public to provide policy and technical advice during the negotiations, and in certain instances, to issue official reports at the conclusion of negotiations within their respective sectors.

*Congressional Oversight and Liaison* (Title I, Ch.'s 5 and 6).—The capability of the Congress to monitor and shape U.S. trade policy during the negotiations also would be strengthened. In addition to the procedures established for the positive approval of nontariff barrier agreements, the bill provides for Congressional overrides of certain types of Executive actions. Examples of Executive actions which could be overridden by a majority vote of the House and Senate include:

1. Decisions by the President to provide import relief other than that recommended by the International Trade Commission,

2. Decisions by the President to retaliate against foreign countries discriminating against U.S. commerce on a most-favored-nation basis rather than against the specific offending country.

In addition to the implementing bills proposing changes in U.S. law as a result of nontariff barrier agreements under Title I, both Houses must approve by concurrent resolution the extension of trade benefits under future trade agreements negotiated by the Executive with nonmarket countries and either House may veto the extension of benefits to nonmarket countries which have entered into, prior to the enactment of this bill, trade agreements with the Executive. To assure greater Congressional oversight of these negotiations, five members of the House and five members of the Senate would be designated official advisors to the U.S. delegation.

*International Trade Commission* (Title I, Ch. 7).—The Committee's bill contains several provisions to foster the independence of and to strengthen the Tariff Commission. Because tariffs are no longer the major impediments to trade, the Commission would be renamed the United States International Trade Commission. The Commission would be expanded from six to seven commissioners, no more than four from any one political party. To enhance the commissioners' independence from Executive domination, commissioners' terms would gradually be lengthened to 14 years, but without reappointment. The chairmanship and vice-chairmanship would be rotated among the commissioners every two years. The Commission would be empowered to enforce its own subpoenas and to represent itself in court proceedings.



## Title II. Relief From Injury Caused by Import Competition

*Industry Import Relief* (Title II, Ch. 1).—The Committee bill would make major changes in the import relief measures provided in the Trade Expansion Act of 1962 for industries. Under present law, increased imports must be *in major part* the result of trade agreement concessions before import relief measures are undertaken; under the Committee's bill, no link to concessions would be required. Furthermore, under the proposed bill increased imports must only be *a substantial cause* of serious injury or the threat thereof ("substantial cause" is defined to mean a cause which is "important" and not less than any other cause) and no longer *the major factor* (generally assumed to mean a cause greater than all other causes combined) of such injury, as required by current law. If the International Trade Commission found imports were a substantial cause of serious injury (or threat thereof) to an industry, the President would be required to provide some form of import relief (duty increases, tariff-rate quotas, quantitative restrictions, orderly marketing agreements, or, under appropriate circumstances and upon a recommendation of the Commission, adjustment assistance). Under present law and under the House bill, the President could choose to do nothing to remedy the serious injury inflicted upon an industry from excessive imports. The Committee decided that whenever serious injury, or that threat thereof, was found to exist by the Commission, some form of relief was justified. The Committee also added a provision to the effect that if the Congress preferred the form of import relief proposed by the Commission to the relief provided by the Executive, a majority of those present and voting of both Houses could pass a resolution requiring the President to implement the relief recommended by the Commission.

*Worker Adjustment Assistance* (Title II, Ch. 2).—The Committee approved major modifications in the existing program of trade adjustment assistance for workers displaced by increased imports. These changes would make adjustment assistance more accessible to these workers. In addition to easing the eligibility tests, the level of benefits would be increased and there would be additional measures aimed at helping adversely affected workers to find new employment, including job search, training and relocation allowances.

Under the worker adjustment assistance provisions approved by the Committee, workers in a firm would qualify for trade adjustment benefits if the Secretary of Labor, within sixty days after the filing of a petition, finds that an absolute increase in imports *contributed importantly* to the workers' unemployment, and to a decrease in sales or production of the firm from which they have become unemployed.

Workers certified as eligible for trade adjustment assistance would receive benefits equal to 70 percent of each worker's average weekly earnings prior to the time he or she became unemployed for a period of up to 52 weeks (the duration of benefit eligibility could be extended for older workers and workers in training). This benefit level, however, could not exceed 100 percent of the national average weekly wage in manufacturing which is currently about \$180.

Under the Committee bill, States would be responsible for meeting the basic costs of benefits for which workers would be eligible under existing State unemployment insurance programs. Supplemental benefits provided over and above that level would be paid for by the Federal Government.

The program would cost the Federal Government an estimated \$335 million in its first year and would expire September 30, 1980.

*Firm Adjustment Assistance* (Title I, Ch. 3).—Firms adversely affected by imports, which are found eligible for assistance, would be entitled to technical assistance as well as financial assistance in the form of loans and loan guarantees, as under present law. Under the Committee bill, the Secretary of Commerce would be required to reach his decision on a firm's adjustment assistance proposal no later than sixty days after receiving the firm's application. The injury test for firms would be virtually identical to that required of workers. The program of adjustment assistance for firms, like the worker adjustment assistance program, would expire September 30, 1980.

*Community Adjustment Assistance* (Title II, Ch. 4).—The Committee bill would establish a new program of community adjustment assistance intended to help restore the economic viability of areas adversely affected by increased imports. The Committee bill is intended to create new job opportunities in trade impacted areas. Under the bill, local governmental units would petition the Secretary of Commerce for a certification of eligibility to apply for assistance. Communities would be certified as eligible to apply for adjustment assistance if the Secretary determines that a significant number or proportion of the workers employed within the "trade impacted area" defined by the Secretary of Commerce have been or are threatened to become totally or partially separated, that sales or production of a firm or firms within the area have decreased absolutely, and that increased imports or the transfer of productive facilities to a foreign nation have contributed importantly to the unemployment or decline in sales or production. Eligible communities could receive a variety of developmental assistance including technical assistance and direct grants for the acquisition and development of land and improvements of public works and public services.

The bill contains several provisions designed to attract new investment to trade impacted areas. The Secretary of Commerce would be authorized to make loans to qualified applicants to acquire, construct, or modernize plant facilities or for such other purposes as the Secretary determines are likely to attract new investment and to create new, long-term employment opportunities within the area. The Secretary would be authorized to make loan guarantees available to qualified applicants under a joint security agreement with the Governor and/or local official in whose jurisdiction the trade impacted area lies (provided the locality's revenue sharing entitlement in previous years has exceeded its share of the guarantee). In order for the loan guarantee to be made, the Governor and/or local official would be required to sign a commitment pledging such a portion of the state and locality's next general revenue sharing entitlement as is necessary to cover up to 50 percent of the deficiency.

In the event of a default on a loan guarantee, the Secretary of Commerce would certify the circumstances and amount of the deficiency to the Secretary of Treasury; the Secretary of Treasury would

reduce the state and/or locality's entitlement for the subsequent revenue sharing allotments by 50 percent of the deficiency. The remaining half would be satisfied out of the general revenues of the Treasury. States would be permitted to enact alternative loan guarantee plans to satisfy any potential liability upon the approval of the Secretary of Commerce.

In order to encourage an increase in the participation of labor in the equity ownership of a corporation which receives special Federal assistance in the form of loan guarantees, the Committee required a qualifying corporation to adopt an employee stock ownership plan. Under the proposal, a corporation whose loan is guaranteed would be required to establish an employee stock ownership plan involving stock valued at least one-quarter the amount of the loan guarantee.

One hundred million dollars would be authorized for loans and direct grants during the first year; up to \$1 billion in outstanding loans could be guaranteed at any one time. The community adjustment assistance program would also expire September 30, 1980.

*Trade Statistics Monitoring System.*—In order to facilitate the operation of the community assistance program, the Committee bill would establish a statistical monitoring system to correlate increases in imports with employment levels by economic sectors. The Committee bill would direct the Bureau of Census and the Bureau of Labor Statistics to develop a program to monitor import trends and to signal abrupt increases in imports which are likely to adversely affect employment in particular sectors of the economy which may be concentrated in particular geographic regions. Such data would be published periodically and made available on a timely basis to the Adjustment Assistance Coordinating Committee. The information could serve as an early warning of serious dislocation from abrupt increases in imports.

*GAO Evaluation of Trade Adjustment Assistance.*—The community assistance program would be a new and, the Committee believes, much needed adjunct to our international trade policy. In order for the Congress to better fulfill its oversight responsibilities over the program, and over the worker and firm programs, the Committee bill would terminate these provisions in five years and require a GAO evaluation study to be completed before the end of that period.

*Relocation of Firms Outside the United States.*—The Committee also felt that firms which make the decision to relocate in a foreign nation ought to assume certain responsibilities toward the employees displaced by foreign production. Under the Committee bill, firms which decide to close their productive facilities in a community and establish a facility producing like or similar articles in a foreign nation would be directed to:

1. Provide advance notice of at least 60 days to employees likely to be laid off;
2. Provide the same advance notice to the Secretary of Labor and the Secretary of Commerce explaining the reason for the relocation;
3. Apply for and utilize all economic adjustment assistance to which they are entitled;
4. Offer alternative employment opportunities to dislocated workers in other facilities within the U.S. wherever they exist; and
5. Assist in the relocation of these workers to other communities in which employment opportunities exist.





### Title III. Relief From Unfair Trade Practices

*Generally.*—The Committee's bill substantially revises Executive authority under existing law to respond to foreign unfair trade practices, including authorities under the Trade Expansion Act of 1962, the Antidumping Act of 1921, and the Tariff Act of 1930. The Committee's intention generally has been to assure a swift and certain response to foreign import restrictions, export subsidies, and price discrimination (dumping) and other unfair foreign trade practices, through the revision of U.S. laws.

A. *Retaliation Against Foreign Import Restrictions; Export Subsidies and Withholding of Supplies* (Title III, Sections 301–302).—Under Section 301 of the bill, the President would be authorized to retaliate against foreign countries which impose unjustifiable or unreasonable restrictions against U.S. commerce. The Committee agreed to amend Section 301 of the House bill to make it explicit that the President has authority to retaliate against countries which maintain such restrictions against U.S. services as well as U.S. trade in goods. Discrimination against U.S. services would include, but not be limited to, discrimination against U.S. shipping, aviation, and insurance industries. Retaliation could occur with respect to foreign services as well as foreign merchandise.

In order to make section 301 a more effective tool against foreign practices and policies adversely affecting the U.S. economy, the Committee also provided a complaint procedure whereby interested parties could petition the Special Representative for Trade Negotiations to conduct a review, with public hearings of such alleged practices and policies. The Special Representative would be required to report to Congress on a semiannual basis concerning the status of the reviews undertaken pursuant to this section.

The Committee bill would require that actions taken by the President under Section 301 should generally be on a selective basis, that is, only against those countries found to discriminate against U.S. commerce. The Committee retained the provision of the House bill, under which the President would have the discretion to act on a selective or a most-favored-nation (that is across-the-board) basis when retaliating against unjustifiable import restrictions. However, the Committee provided that Congress could overrule the President's determination to act against "innocent" countries and require, by concurrent resolution, that the President act only against the offending country (or countries) maintaining unreasonable or unjustifiable restrictions against U.S. commerce or withholding supplies.

The Committee's decision to give the power of retaliation in situations in which a foreign nation withheld supplies of needed commodities without justification complements other features of the bill directing the President to negotiate new, enforceable rules with respect to export restraints. In an international economic period characterized by widespread shortages and inflation, this is a vital aspect of the trade negotiations.

B. *Antidumping Duties* (Title III, Section 321).—The bill would make several significant changes in the antidumping statute to improve the U.S. response to foreign price discrimination practices.

1. *Home market prices*.—The Committee bill would direct the Secretary of the Treasury to require that certified import invoices include data reflecting the home market price and the purchase price of each article imported in the U.S. Also, the importer would be required to state whether he has knowledge of a bounty or grant (subsidy) on the article by the exporting country. Confidential information would be protected.

2. *Equal hearing rights*.—Under the House bill, foreign manufacturers and importers would have an automatic right to a hearing before the Secretary of the Treasury or the Commission in connection with less-than-fair-value or injury determinations made under the Antidumping Act. Other persons, including domestic manufacturers, could appear at such hearings only upon a showing of good cause. The Committee bill would amend the House bill to provide that U.S. manufacturers, producers, or wholesalers of the merchandise, as well as foreign manufacturers, exporters and domestic importers, would have an equal and automatic right to appear at such hearings.

3. *Preliminary injury determination*.—The Committee bill would authorize the Secretary of the Treasury, when he concluded that there was substantial doubt that a U.S. industry was being injured by "dumped" imports, to refer the initial dumping complaint to the Commission for its consideration. If the Commission determined that there was no reasonable indication of injury, it would notify the Secretary within 30 days and the dumping investigation would terminate.

4. *Time limits*.—The Committee bill, like the House bill, would require that the initial determination whether there is reason to believe that there are less-than-fair-value sales be made within 6 months from the date on which the antidumping proceeding notice is published. (This period for initial determination could be extended to 9 months in complicated cases.) The Committee amended the procedure to require that the antidumping proceeding notice must be published within 30 days of the receipt of an antidumping complaint by the Secretary of the Treasury.

5. *Multinational corporation dumping*.—The Committee bill would authorize the Secretary of the Treasury to impose dumping duties when a multinational corporation operating in several foreign countries supports low-priced exports to the United States through high-priced sales by other subsidiaries located in other foreign countries. Specifically, when the Secretary determines that:

(1) merchandise exported to the U.S. is produced in facilities owned or controlled by a person, firm, or corporation which also owns or controls similar facilities in other countries;

(2) there are little or no sales in the home market of the exporting country; and

(3) sales of like or similar merchandise made in other countries are at prices substantially higher than the prices charged for goods produced in the exporting country and such price differentials are not justified by cost differences,

the Secretary could determine the foreign market value by looking at the higher prices (adjusted for differences in cost of production)

at which similar merchandise is sold by other foreign facilities located outside the exporting country. The dumping duty could then be assessed in an amount equal to the difference between the purchase price in the U.S. (or the exporter's sale price) and the higher foreign market value of goods sold by the third country subsidiaries rather than the lower foreign market value of the goods actually exported to the United States.

6. *Judicial review.*—The bill provides for explicit statutory language authorizing judicial review for U.S. producers and manufacturers in the U.S. customs courts of negative antidumping decisions made by the Secretary of the Treasury. Importers and foreign producers are entitled to judicial review under current law.

C. *Countervailing Duties* (Title III, Section 331).—Section 303 of the Tariff Act of 1930 requires the Secretary of the Treasury to impose countervailing duties upon imported merchandise if its manufacture, production, or export has benefited directly or indirectly from a bounty or grant (subsidy). Section 331 of the bill would make major procedural as well as substantive changes in the countervailing duty law to improve the operation of the statute:

1. *Beginning of time period for investigation.*—Under the House bill, the time period for concluding countervailing duty investigations would run from the date on which the question was presented to the Secretary of the Treasury, a date which is left to the discretion of the Secretary following the receipt of a petition. The Committee bill provides that the time period for countervailing duty investigations would begin to run from the date a petition is presented to the Secretary of the Treasury. Notice of the receipt of such petition would be published in the Federal Register.

2. *Time limits; conditional discretion and Congressional override.*—Under the House bill, the Secretary of the Treasury would have one year to conclude an investigation to determine whether or not an imported product is subject to a bounty or grant. Furthermore, the House bill would have allowed the Secretary four additional years in which to waive the imposition of countervailing duties whenever he determined that imposition of such duties would prejudice trade negotiations with countries affected. The Committee felt that this discretionary authority was without sufficient safeguards and could result in serious injury to U.S. industries. Consequently, the Committee provided that:

(a) The Secretary of the Treasury would have six months from the date of the petition in which to make a preliminary determination as to the existence of a bounty or grant.

(b) If the initial determination indicated the likely existence of a bounty or grant, the Secretary of the Treasury would have an additional six months to negotiate with the particular foreign country(ies) in an attempt to obtain the elimination of the bounty or grant.

(c) If the bounty or grant, or any portion thereof, remained in effect, the Secretary of the Treasury would then be required to issue a final countervailing duty order following the end of the second six-month period (total time period one year from date of petition). However, he may suspend the application of the order if he determined that:

(i) adequate steps had been taken substantially to reduce or eliminate the adverse effect of the bounty or grant;

(ii) there is a reasonable prospect that successful trade agreements will be entered into, under section 102, with foreign countries providing for the reduction or elimination of nontariff barriers; and

(iii) the imposition of countervailing duties would be likely to seriously jeopardize the satisfactory completion of such negotiations.

The suspension must be ended if any of the conditions described above do not continue, and may be ended at any time. The authority of the Secretary to suspend countervailing duties would expire after two years from date of enactment of the bill. The initial determination, the results of any negotiation, and any final determination (including suspension of countervailing duties) would be made public.

(d) If the Secretary decided to suspend the imposition of countervailing duties, he would immediately report his determination to Congress. At any time thereafter, either House of Congress could, under the veto procedure agreed to by the Committee, vote by simple majority to override the Secretary's decision and to require the Secretary to impose immediately the countervailing duties.

(e) Countervailing duty orders by the Secretary of the Treasury would go into effect immediately upon publication of the order in the Federal Register (no later than one year after the date a petition is submitted to the Secretary). In the case of a Congressional override, notice of countervailing duties would be published and such duties would go into effect the day after the date of the adoption of the resolution of disapproval.

(f) The determination by the Secretary of the Treasury that no bounty or grant exists would be subject to judicial review. Under existing law, only positive determinations are subject to judicial review.

3. *Exception for products subject to quotas.*—The Committee bill deletes the language in the House bill which would have provided the Secretary of the Treasury the discretion to waive the imposition of countervailing duties for products subject to quantitative restrictions. The House provision would have applied primarily to agricultural products subject to quotas under Section 22 of the Agricultural Adjustment Act of 1933.

D. *Unfair Import Practices* (Title III, Section 341).—Section 337 of the Tariff Act of 1930 authorizes the Tariff Commission to investigate alleged unfair methods of competition in the importation of articles or in the sale of imported articles in the United States. It has been most often applied to articles entering the United States in violation of claims under U.S. patents. Under present law, if the Commission finds the effect of such methods is to destroy or substantially injure an industry efficiently and economically operated in the United States, to prevent the establishment of an industry or to restrain or monopolize trade or commerce in the United States, the articles involved *may* be excluded from entry into the United States by the Secretary of the Treasury at the direction of the President.

Section 341 of the House bill would amend section 337 of the Tariff Act of 1930 to authorize the Commission, itself, to order the exclusion

of articles involved in unfair methods and acts based upon United States patents.

The Committee bill, on the other hand, would authorize the Commission to order the exclusion of articles in all cases under section 337, patent and nonpatent. The Committee bill would also permit the Commission to issue cease and desist orders rather than exclusion orders whenever it deemed such action a more suitable remedy. If the cease and desist order were not adhered to, the exclusion order would go into effect. More specifically, the Committee bill incorporates the following provisions:

1. *Time limits for action.*—The Committee bill would require that International Trade (Tariff) Commission investigations of unfair trade practices under section 337 be completed within a one-year period. The Commission would be given an additional 6 months in complicated cases, provided that it publish the reasons for the extension. Any period during which the Commission's investigation is suspended because of proceedings in a Federal court or agency involving the same subject matter, would be excluded from the time periods.

2. *Investigations by the Commission.*—During its investigations under section 337, the Commission would be directed to consult with the Departments of Justice, Health, Education, and Welfare, the Federal Trade Commission, and other government agencies when appropriate. In making its determinations as to whether or not to act, the Commission would be required to take into consideration, in addition to the criteria currently set out in section 337(a), the effect which such action would have on the general health and welfare, on competitive conditions in the economy, on the production of like or competitive merchandise in the United States, and on consumers. These considerations could be overriding.

3. *Presidential intervention.*—Following the issuance of exclusion or cease and desist orders by the Commission, the President would have 60 days in which to intervene and override the Commission's decision where he determined it necessary because of overriding policy reasons.

4. *Patent cases.*—The House bill would be amended to provide that price gouging be considered by the Commission as a valid defense in section 337 patent cases, along with other legal and equitable patent defenses. Under the Committee bill, the remedies in section 337 patent cases would not apply to imports by the U.S. Government. Such actions against the Government would be brought in the U.S. Court of Claims.

5. *Bonding procedure.*—Temporary exclusion orders may be issued in certain circumstances under section 337; in such cases (and also during the 60-day period for Presidential intervention), provision is made for entry under bond. The Committee bill would amend section 337 to require the Secretary of the Treasury, prior to levying a bond, to acquire the advice of the Commission concerning the amount of the bond in both patent and nonpatent cases.

6. *Transitional measures.*—The Committee bill would require the Commission to complete within one year its investigations on all section 337 cases pending on the date of enactment of the trade bill.

7. *Res judicata, collateral estoppel.*—Under the Committee bill, decisions by the U.S. Court of Customs and Patent Appeals reviewing Commission decisions under section 337 should not serve as res judicata or collateral estoppel in matters where U.S. District Courts have original jurisdiction.



#### **Title IV. Trade Relations With Countries Whose Products Are Not Currently Receiving Most-Favored-Nation (Nondiscriminatory) Treatment in the U.S. Market**

Title IV of the House bill would authorize the President to extend, under certain circumstances, most-favored-nation (nondiscriminatory) trade concessions to countries whose products do not currently receive such treatment. The only countries not now receiving nondiscriminatory treatment in the U.S. market are the communist nations (with the exception of Poland and Yugoslavia, whose products do receive such treatment). Under Section 231(a) of the Trade Expansion Act of 1962, the President is precluded from extending nondiscriminatory or column 1 treatment to countries not currently receiving such treatment.

Title IV would impose several conditions on the delegation of authority to the President to extend nondiscriminatory treatment. Section 402 would provide that no country would be eligible to receive nondiscriminatory tariff treatment or U.S. Government credits, credit guarantees or investment guarantees if the President determines such country:

- (1) denies its citizens the right or opportunity to emigrate;
- (2) imposes more than a nominal tax on emigration or on the visas on other documents required for emigration, for any purpose or cause whatsoever; or
- (3) imposes more than a nominal tax, levy, fine, fee or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice.

The Committee bill retains the House bill language in section 402 relating to freedom of emigration. The Committee reserves the right to recommend to the Senate such amendment as may be necessary to clarify the requirements of section 402 after conducting public hearings on the subject and before consideration of the bill on the floor of the Senate.

A country would become eligible for nondiscriminatory treatment under this title only after the President determined that it was not violating any of the above conditions and so reported his determination to the Congress. Any country which was found to be denying its citizens the rights to emigrate would also be prohibited from receiving any U.S. Government credits, credit guarantees, or investment guarantees, and from entering into a bilateral trade agreement under section 403. Following receipt of the initial report by the President to the Congress under section 402, either House could veto the extension of Government credits and guarantees to the country concerned by a majority veto within 90 days.

Under the Committee bill, only countries entering into bilateral agreements with the United States could receive nondiscriminatory treatment. The House bill would have granted nondiscriminatory



treatment to countries which are members of the GATT. Non-discriminatory treatment would remain in effect only so long as a trade agreement remained in force between the United States and the country concerned. The President, however, would have the authority to suspend or withdraw nondiscriminatory treatment to any country at any time.

Under section 403, nondiscriminatory treatment for any country which had entered into an agreement with the United States for the settlement of lend-lease debts would be limited to periods in which the country was not in arrears on its obligations under the agreement. The Soviet-American lend-lease settlement agreement, on the other hand, conditions the Soviet Union's fourth and all subsequent lend-lease payments upon the extension of nondiscriminatory treatment by the United States.

All future bilateral agreements entered into between the United States and a nonmarket economy nation would be subject to approval by both Houses of Congress before the President could proclaim trade concessions. The one-House veto provision in the House bill would still apply to the extension of nondiscriminatory treatment under the U.S.-Soviet commercial agreement. Furthermore, following receipt of the annual December report of the President under sections 402 and 403, either House could, within 90 days, veto the continued extension of MFN treatment or granting of government credits or guarantees to any country receiving nondiscriminatory treatment under Title IV. Trade benefits under any bilateral agreement would be limited to an initial period not exceeding three years. Thereafter, an agreement could be renewed for additional periods, each of not more than three years, providing that a satisfactory balance of concessions in trade and services had been maintained and that U.S. reductions in trade barriers had been reciprocated by the other party. Services would include transportation and insurance and other commercial services associated with international trade.

Bilateral agreements would be required to include provisions for: (1) suspension or termination for reasons of national security, (2) safeguards against disruption of domestic markets, (3) protection of patents if the other party is not a member of the Paris Convention for the Protection of Industrial Property, (4) settlement of commercial disputes, and (5) consultations for reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party. Bilateral agreements could also include arrangements for the protection of industrial rights such as copyrights, promotion of trade, and other commercial arrangements promoting the purposes of the bill.

*Market disruption.*—The Committee bill contains significant improvements in the provisions of the House bill designed to avert disruption of U.S. markets by imports from nonmarket economies.

1. *Safeguard provisions in commercial agreements.*—Under the Committee bill, consultation procedures and rules would be written into all commercial agreements with nonmarket countries similar to Article 3 and Annex I of the U.S.-U.S.S.R. Trade Agreement.

2. *Petition for consultation.*—The Committee bill would permit trade associations, firms, and unions to petition the Special

Representative for Trade Negotiations to initiate consultation procedures between the U.S. and the particular nonmarket economy upon a showing of likelihood of market disruption as a result of imports entering under a commercial agreement negotiated pursuant to Title IV.

3. *Relief from market disruption.*—The Committee bill would amend the market disruption provisions of the House bill to provide that market disruption may be found to exist upon a determination by the International Trade (Tariff) Commission that an article from any communist country is being, or is likely to be, imported into the United States in such increased quantities as to be a significant cause of material injury, or the threat thereof, to a domestic industry. The Commission would have three months to conclude its investigation under section 406, as amended by the Committee. These provisions would apply to all communist countries.

4. *Expedited relief.*—The Committee bill would authorize the President to take immediate action whenever he determines that a condition exists requiring emergency treatment. This "fast track" authority would apply to both the consultative procedures undertaken by the STR and the market disruption relief provisions in section 406, as amended by the Committee.

5. *Selective application.*—The Committee bill would limit the President's authority to impose import restrictions only to the products from nonmarket countries which are causing the market disruption.

*Claims settlement with Czechoslovakia.*—Under the Committee bill, Czechoslovakia would not be eligible to receive most-favored-nation treatment, U.S. Government credits or guarantees, or the release of Czechoslovakian gold until the Government of Czechoslovakia first pays all principal amounts it owes U.S. citizens on awards rendered by the United States Foreign Claims Settlement Commission.

*Cooperation in locating MIA's in Southeast Asia.*—Title IV of the Committee bill includes a provision which would condition the extension of MFN treatment and government credits to nonmarket economies upon a Presidential determination that such countries had undertaken to obtain the cooperation of the pertinent governments in Southeast Asia in locating U.S. personnel missing in action, in repatriating those who are alive, and in recovering the remains of those who are dead.



## **Title V. Generalized System of Preferences**

*General Authority.*—Title V of the bill would provide the President with general authority to extend duty-free treatment to eligible products imported into the United States from beneficiary developing countries for a 10-year period. The essential features of the program would be as follows:

- The President would be authorized to extend duty free to specified products imported from developing countries;
- The President would designate beneficiary developing countries; 26 countries are expressly excluded;
- Eligible articles would have to be imported directly from the developing country; the value added in that country must be at least a minimum percentage (35%) of the value of the article, except in those cases where the country is a member of a free trade association in which the local content from association countries must be 50%;
- Articles subject to escape clause or national security relief would be excluded;
- Articles imported from any one country would be excluded if the imports of the article from that country exceed \$25 million or 50% of total U.S. imports of that article;
- The system would be reviewed in a report to Congress after five years and would expire after ten years.

In addition, the Committee bill includes the following provisions:

1. *Beneficiary developing countries.*—The Committee bill would exclude countries within the following categories from eligibility to receive generalized preference under Title V of the bill:

- a. All Communist countries.
- b. Any country which has entered into a cartel-type arrangement, the effect of which is to withhold supplies of vital materials or to charge a monopolistic price which creates serious disequilibrium in the world economy. This category would be applied explicitly to all member countries of the Organization of Petroleum-Exporting Countries (OPEC). Countries which are members of such cartels as OPEC, could only qualify for preferential treatment in the U.S. market if they entered into an agreement with the United States or an agreement to which the United States is a party, which assures U.S. access to essential articles at reasonable prices.
- c. Any country which has expropriated the property of a U.S. national without provision for prompt, adequate, and effective compensation or without submitting the dispute to arbitration or carrying on good-faith negotiations.
- d. Any country which has not taken adequate steps to prevent narcotics and other controlled substances from unlawfully entering the United States.

2. *Reverse preferences.*—Under the House bill, countries which grant reverse preferences to developed countries are not eligible for generalized preferences under Title V. The Committee bill would amend this section to provide that countries could be eligible for generalized preferences if they eliminate such preferences by January 1, 1976, or if they take steps to assure that such preferences do not have a significant adverse effect on U.S. commerce by January 1, 1976.

3. *Insular possessions.*—The Committee bill includes a provision stipulating that insular possessions of the United States must receive treatment no less favorable than that accorded any other developing country with respect to any eligible product under Title V of the bill.

4. *Sensitive products.*—The Committee understands that articles which are sensitive articles, including, but not limited to, those described in a letter from the Special Representative for Trade Negotiations, would be excluded from preference eligibility under Title V of the bill. The President would exclude such products as he deems would be sensitive after receiving the Commission's report.

5. *Access to markets and commodity resources.*—The Committee bill would require the President to take into account the extent to which a developing country was providing the United States equitable and reasonable access to its markets and basic commodity resources in determining whether to designate such country as eligible to receive preferences under Title V.

6. *Termination of preferential treatment.*—The Committee bill would extend the time period for notification to the Congress of a Presidential decision to terminate preferential treatment for a developing country from 30 days (under the House bill) to 60 days prior to the time the determination takes effect. Furthermore, the amendment would require that the country involved also be notified within 60 days prior to the effective date of the termination of its preferential treatment.

7. *Local content (value added) requirement.*—Under the House bill, a developing country exporting a product to the United States would have to provide between 35 percent and 50 percent of the value of the product upon importation into the United States in order to be eligible for duty-free treatment. Under the Committee bill, less developed countries which are members of a free trade area or customs union and designated by the President could be aggregated in applying the local content requirement under Title V of the bill. Such countries would also be aggregated for purposes of the competitive need formula. However, in any case where more than one developing country has contributed to the value of a product, a flat local content requirement of 50 percent would be applied. In those cases where only one developing country had contributed to the value of a product, a flat local cost requirement of 35 percent would be applied.

8. *Increases in gross national product.*—Under the House bill, any product is imported into the United States from any developing country in an amount equal to more than \$25 million in value

in any one calendar year would lose its eligibility for duty-free treatment under Title V of the bill. The Committee bill includes an escalator provision which would provide for an annual percentage increase in the \$25 million figure equal to the percentage increase in the U.S. gross national product for the year preceding the year in question over the U.S. gross national product in 1974.

9. *Products not produced in the United States.*—The Committee bill would exempt any product from the 50-percent-of-total-imports ceiling in Title V of the bill where there is no directly competitive article produced in the United States. Thus, even if a product from a particular developing country represents more than 50 percent of total U.S. imports of that product in any one calendar year, it would still be eligible for duty-free treatment under Title V of the bill if there were no directly competitive article produced in the United States. Under certain circumstances, the President could waive the 50 percent or \$25 million ceiling.



## **Title VI. General Provisions**

Title VI of the bill contains general provisions covering definitions, relations to other laws, conforming changes in the tariff schedules and other matters.

Of particular significance are the following provisions of the Committee bill:

*Services.*—The Committee bill would amend Title VI to make it explicit that whenever the term "commerce" is used throughout the trade bill, it is to include by definition services associated with international trade. Furthermore, the term "trade" in Title I of the bill is defined to include trade in goods and services.

*Narcotics.*—Title V of the Committee bill would condition the extension of preferential treatment to a developing country upon a requirement that it take adequate steps to prevent narcotics and other controlled substances from unlawfully entering the United States. Consistent with this, the Committee bill would delete Section 606 of the House bill which would have required the President to embargo trade and investment with any country which the President determined had failed to take adequate steps to prevent narcotic drugs and other controlled substances from unlawfully entering the United States. In lieu of the embargo provision, a provision in Title VI of the Committee bill would require the President to report to the Congress describing where dangerous drugs are being produced abroad, refined and shipped to the United States, and of the steps these specific countries have taken with respect to controlling the production and transportation of such products.

*Uniform Import Statistical Collection and Reporting.*—The Committee bill would direct the appropriate agencies to collect and publish uniform statistics on imports, exports and production. At the present time, trade statistics and production data are collected in such a manner as to make comparisons impossible.

*Trade Statistics.*—The Committee bill would require that the Executive Branch submit monthly to the Senate Committee on Finance and House Committee on Ways and Means trade data which would include in all import values the cost of insurance, port charges and freight and would exclude from all export values soft currency sales and long-term foreign aid shipments.

*Voluntary Steel Restraint Agreement.*—The Committee bill includes a provision which would immunize persons from prosecution under state and Federal antitrust laws by reason of their participation in the voluntary arrangement regarding steel imports to the United States which expires December 31, 1974.



# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

## HOUSE BILL

## COMMITTEE BILL

### TITLE I. NEGOTIATING AND OTHER AUTHORITY

Sections 101-163

Sections 101-175

#### TRADE AGREEMENTS AUTHORITY

Five-year authority to enter into trade agreements, pro-  
claim rate changes, and negotiate nontariff barriers.

Time limitations on trade agreement authority the same  
as in House bill.

Limits on tariff decreases:

- \* Rates 5 percent ad valorem or less—no limitation
- \* Rates more than 5 percent but less than 25 percent  
ad valorem—60 percent reduction
- \* Rates 25 percent ad valorem or more—75 percent  
reduction subject to 10 percent ad valorem “floor”

Limits on tariff decreases:

- \* Rates 10 percent ad valorem or less—no limitation
- \* Rates more than 10 percent ad valorem—50 percent  
reduction

Limits on tariff increases:

- \* the higher of: 150 percent of 1934 rates, or 20 per-  
centage points above 1973 rates.

Limits on tariff increases:

- \* Essentially unchanged from House bill.

(1) Congressional intent:

- President should take all steps to reduce or eliminate trade barriers
- To extent feasible, balance should be sought for major product sectors

(1) Congressional intent:

- NTB scope broadened to include:
  - \* subsidies adversely affecting the U.S. economy, and
  - \* measures preventing fair and equitable access to supplies, *and*
  - \* trade barrier *harmonization*, as well as reductions or eliminations to be sought.
- To maximum extent feasible, agricultural tariffs and NTB's to be negotiated in conjunction with industrial tariffs and NTB's. To extent feasible, sector-by-sector negotiations to occur on the basis of appropriate product sectors of manufacturing.
- Principal objectives in the negotiation of NTB's to include agreements on international safeguards procedures and to provide availability of essential articles at reasonable prices.

(2) The President would be authorized and encouraged to negotiate bilateral agreements with foreign countries if such agreements would better serve U.S. economic interests than multilateral agreements. In addition, the President would be directed to negotiate an agreement with Canada aimed at the mutual elimination of trade barriers.

(3) All NTB agreements to be submitted to Congress, and to enter into effect only after enactment of necessary implementing legislation by both Houses of Congress. (Congressional Approval Procedure.)

(2) Where no change in U.S. law is required (as determined by President), President could negotiate and implement nontariff trade agreement

Where change in U.S. law is required (as determined by President), change would become law unless vetoed by either House or Senate within 90 days.

# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

## HOUSE BILL

## COMMITTEE BILL

### TITLE I. NEGOTIATING AND OTHER AUTHORITY—Continued

Sections 101-163

Sections 101-175

#### STAGING REQUIREMENTS

Annual tariff reductions may not exceed the greater of—  
—3 percentage points in the tariff rate, or  
— $\frac{1}{15}$  of the total reduction.

No staging requirement where existing tariff is reduced  
10% or less.

Where reductions are greater than 20 percent ad  
valorem—

\* annual reductions shall not exceed  $\frac{1}{10}$  of the total.

Where reductions are not greater than 20 percent ad  
valorem—

\* annual reductions shall not exceed 2 percent ad  
valorem.

Reductions of 10 percent or less of the existing rate—  
same as House bill.

#### GATT REVISION AND AUTHORIZATION

(1) President shall renegotiate GATT articles dealing  
with:

(1a) President to renegotiate GATT articles on new  
codes on trade principles noted in House bill, and, *in  
addition:*

- \* decision-making procedure (weighted voting)
- \* import relief
- \* unfair trade practices

\* access to supplies, including rules governing export  
controls, denial of supplies, and consultations on  
supply shortages

- \* international fair labor standards
- \* border taxes
- \* balance of payments measures

- \* the extension of GATT to deal with countries which deny goods and thereby injuring the international community
- \* any revisions necessary to establish regular consultations
- \* elimination of special reverse preferences
- \* flexible monetary mechanisms
- \* code on subsidies and foreign investment incentives
- \* agreements on extraterritorial application of national laws.

(1b) Agreements covering the above which require modification of Federal laws would be subject to congressional approval.

(2) Appropriations for GATT authorized without implied approval or disapproval of the Agreement.

(2) Authorizes appropriations for existing GATT

#### BALANCE OF PAYMENTS AUTHORITY

(1) When U.S. has large *deficit*:

- \* Impose import surcharge of up to 15% and/or impose temporary quotas
- \* 150 day limit

(2) When U.S. has large *surplus*:

- \* Reduce duties by not more than 5 percentage points
- \* Reduce or suspend other import restrictions
- \* 150 day limit

(1) President *directed* in deficit situations to take House specified corrective actions for up to 180 days, unless he determines and so informs Congress, that the corrective actions would be contrary to the national interest.

(2) Changed to deal with *balance-of-trade* surplus, (imports measured on CIF basis).

- \* Remedies essentially unchanged from House version, except that uniform product coverage generally required

# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

HOUSE BILL

COMMITTEE BILL

## TITLE I. NEGOTIATING AND OTHER AUTHORITY—Continued

Sections 101-163

Sections 101-175

### ANTI-INFLATION AUTHORITY

Authorizes President to reduce or suspend duties and/or increase level of imports subject to quotas

Anti-inflation authority deleted.

Coverage limited to 30% of U.S. imports during any 150-day period

Excludes articles subject to proclamations under sec. 22 of the Agricultural Adjustment Act, those subject to import restrictions under national security provisions, and those subject to import relief actions

### OTHER AUTHORITIES DELEGATED TO THE PRESIDENT

(1) Compensation for import relief measures—

(1) Compensation authority essentially unchanged from House bill; *however*, compensation not authorized to countries where the United States has not obtained adequate compensation for past trade agreement violations. Compensation phased out when import relief measures terminate.

\* Authority available after 5 years

\* Tariffs may be cut up to 30%

\* No provision for increasing tariffs once import relief measures are terminated

(2) Renegotiation of duties ("clean-up" authority)

(2) Renegotiation authority essentially unchanged from House bill.

\* 2-year authority after 5-year trade agreement authority expires

- \* 20% tariff reduction permitted, subject to general trade agreement limits
- \* Coverage limited to 2% of U.S. imports
- (3) \* National security provisions—
  - or other import restrictions where such action would threaten national security
- \* Articles subject to national security or import relief actions excluded from negotiations, and anti-inflation and compensation actions

(3) Basic national security provisions generally unchanged; *however*, a complaint procedure established whereby petitions for relief from imports threatening to impair the national security would be submitted to the Secretary of the Treasury who shall consult with DOD and other appropriate agencies. Secretary's determination to be made within one year.

#### TERMINATION AND WITHDRAWAL

- (1) Trade agreements must include provision permitting termination or withdrawal within 3 years, and thereafter upon 6 months' notice
- (2) President may at any time terminate tariff reductions proclaimed pursuant to negotiated trade agreement
- (3) In order to exercise rights and obligations under any trade agreement, President given specific authority to suspend application of trade agreement and proclaim duty increases
- (4) Trade agreement tariff rate may remain in effect 1 year following termination of trade agreement; President submits recommendation for new tariff rates to Congress within 60 days after termination

(1) Essentially unchanged

(2) Unchanged

(3) Essentially unchanged

(4) Essentially unchanged

(5) President directed to suspend trade agreement obligations and increase duties whenever any foreign country compromises its concessions to the United States without providing adequate compensation.

IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON  
FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

HOUSE BILL

COMMITTEE BILL

TITLE I. NEGOTIATING AND OTHER AUTHORITY—Continued

Sections 101-163

Sections 101-175

RECIPROCAL NONDISCRIMINATORY (MFN) TREATMENT

Generalized unconditional MFN treatment specified  
except as otherwise provided in TRA or other laws.

Generalized unconditional MFN treatment specified,  
*but:*

\* after 5 years the President to determine whether  
any major industrialized country has failed to make  
concessions to the United States equivalent in com-  
petitive opportunities to those provided by U.S.  
trade agreement concessions

\* If a major industrialized country has not made con-  
cessions providing for substantially equivalent  
competitive opportunities the President would be  
required to withdraw U.S. concessions made in the  
Trade Agreements Program with respect to that  
country

\* The reciprocal MFN treatment described above  
shall apply to Canada, the EEC, Japan, and any  
other country so designated by the President.

*Congressional Veto Procedure Applies:*

- \* to nontariff barrier trade agreement submitted to Congress
- \* to escape clause, quota, or orderly marketing relief
- \* to retaliation against unfair trade practices
- \* to extension or continuation of nondiscriminatory tariff treatment

*Congressional Veto Procedure:*

- \* President transmits proclamation or agreement to Congress
- \* Resolution of disapproval must be introduced and referred to Committee
- \* Committee has 7 calendar days to consider resolution; member favoring disapproval can move to discharge resolution (no amendments permitted)
- \* Floor debate on motion to discharge, or if reported out, on resolution of disapproval (no amendments permitted)
- \* If either House approves resolution of disapproval, agreement or proclamation does not take effect.
- \* *Provided* veto procedure completed within 90 legislative days.

*Congressional Approval Procedure Applies:*

- \* to all nontariff barrier trade agreements,
- \* to GATT revisions requiring modification existing domestic law (if modification submitted in accordance with Sec. 151)
- \* to bilateral trade agreements with non-MFN countries entered into after enactment.

*Congressional Approval Procedure (Sec. 151):*

- \* Implementing bill or approval resolution submitted by President and introduced in each House (no amendments permitted)
- \* Committees have 45 working days to consider (automatic discharge provided)
- \* Bill or resolution sent to floor, vote within 15 working days (in the case of revenue bills coming from the House, the Senate is guaranteed up to 15 working days consideration in Committee and up to 15 working days before final vote on the floor).
- \* Rules, in effect, require vote on final passage within 60 working days, or in the case revenue bills within 90 working days, but no overall time limits are specified.
- \* Failing enactment or adoption the measure cannot enter into force.

*Congressional Veto Procedure (Two-House Disapproval) Applies:*

- \* to Presidential import relief where different than Commission's recommendation (60-day time limit)



# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

## HOUSE BILL

## COMMITTEE BILL

### TITLE I. NEGOTIATING AND OTHER AUTHORITY—Continued

Sections 101-163

Sections 101-175

#### CONGRESSIONAL PROCEDURE WITH RESPECT TO PRESIDENTIAL ACTION—continued

\* to Presidential retaliation on an MFN basis against unjustifiable or unreasonable restrictions (90-day time limit)

#### *Two-House Disapproval Procedure (Sec. 152):*

- \* Resolution of disapproval must be introduced in either House and referred to Committee,
- \* If Committee does not report resolution in 30 days motions to discharge are in order (no amendments permitted)
- \* Floor debate limited
- \* Both Houses must adopt resolution by majority vote
- \* Procedure must be completed within time limits specified; otherwise Presidential action enters into force.

#### *Congressional Veto Procedure (One-House Disapproval)*

##### *Applies:*

- \* to Secretary's determination not to apply countervailing duties during 5-year discretionary period (no time limit)

- \* to bilateral trade agreements with non-MFN countries entered into before enactment. (90-day time limit)
- \* to all annual reviews of MFN treatment and government credits and guarantees under Title IV (90-day time limit)
- \* to U.S. Government credits and investment guarantees initially extended after date of enactment.

*One-House Disapproval Procedure (Sec. 152):*

Same as two-House method except that adoption by majority vote of those present and voting in *either* House, within time limits specified, is sufficient to prevent action.

UNITED STATES TARIFF COMMISSION

No similar provisions.

(1) Tariff Commission renamed the "United States International Trade Commission."

(2) \* Membership and term of office:

- \* Membership increased from 6 to 7 Commissioners; no more than 4 of the same political party.
- \* Terms of office increased from 6 to 14 years with one term expiring every other year.
- \* Commissioners serving more than 7 years after enactment of the bill may not be reappointed.
- \* Chairman and Vice-Chairman to rotate with assignments normally determined by seniority.

(3) Other changes:

- \* Commission pay up-graded
- \* Voting record of Commissioners to be published.
- \* Commission to be represented in court by its own attorneys or by the Attorney General at its discretion.
- \* Commission given independent budget, annual authorizations.

# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

## HOUSE BILL

## COMMITTEE BILL

### TITLE II. RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Sections 201-264

Sections 201-283

#### CRITERIA FOR FINDING INJURY

##### *Escape clause*

*Industry.*—Tariff Commission finding within 6 months; increased imports must be a substantial cause of serious injury (i.e. not less than any other cause)

##### *Escape clause*

*Industry.*—Injury determination and criteria unchanged, except that an *absolute* increase in import must occur.

##### *Adjustment assistance*

*Workers.*—Secretary of Labor determination in 60 days that:

- \* a significant number or proportion of workers have become totally or partially separated,
- \* sales or production have decreased, and
- \* increased imports contributed to decline in sales or production and to separation of workers

##### *Adjustment assistance*

*Workers.*—Criteria unchanged *except that*

- \* Secretary given subpoena powers to help him obtain evidence necessary for his determination,
- \* judicial review of negative divisions explicitly provided for, and
- \* *absolute* increase in imports must occur.

*Firms.*—Secretary of Commerce determination in 60 days; same criteria as worker injury

*Firms.*—Criteria unchanged *except that*

- \* *absolute* increase in imports must occur.

No similar provisions.

*Communities.*—Secretary of Commerce determination in 60 days that:

- \* a significant number or proportion of workers in the trade impacted area in which the community is located have become totally or partially separated,
- \* sales or production of firms in the trade impacted area have decreased,
- \* absolute increases in imports like or competitive with those produced in the trade impacted area, or the transfer of firms from the area to foreign countries have contributed to the decline and separations, and
- \* the Secretary to establish boundaries of trade impacted areas.

#### REMEDIES FOR INJURY

##### *Escape clause*

*Industry.*—President may provide relief only in following order of preference: tariff increase; tariff-rate quotas; quotas; and orderly marketing agreements (the latter 2 are subject to Congressional veto procedure); or any combination of the above.

##### *Escape clause*

*Industry.*—President must provide import relief of the types specified in the House bill, but in any order of preference. Congress can impose Commission remedy if it differs from Presidential relief (Presidential actions different from Commission remedy subject to Congressional veto procedure). Orderly marketing agreements may be substituted for other forms of relief and vice versa. Commission authorized to recommend adjustment assistance for firms and workers as a type of industry relief in certain circumstances. Congressional veto procedure for quotas and orderly marketing agreements, and Presidential termination of import relief upon national interest determination *deleted*.

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FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

HOUSE BILL

COMMITTEE BILL

TITLE II. RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION—Continued

REMEDIES FOR INJURY—continued

*Adjustment assistance*

*Workers.*—Cash benefits equal to 70 percent of workers previous weekly wage for 26 weeks, and 65 percent for next 26 weeks; not to exceed national average weekly wage

\* Relocation allowances for any unemployed worker; job search allowances up to \$500

\* Employment services: testing, counseling, training, and job placement

*Firms.*—Technical and financial assistance.

*Communities.*—No similar provisions.

*Adjustment assistance*

*Workers.*—Adjustment assistance essentially as provided in House bill, with some modest increases—70 percent of workers previous weekly wage for 52 weeks. Federal Government to pay only the incremental amount above usual State unemployment insurance benefits.

*Firms.*—Adjustment assistance essentially unchanged from House bill; Secretary given a 60-day time limit to make a determination on adjustment petitions.

*Communities.*—Assistance in establishing Trade Impacted Area Councils.

\* Benefits to include all forms of assistance provided under the Public Works and Economic Development Act of 1965 other than loan guarantees

\* A special loan guarantee program in which State governors participate by pledging a portion of anticipated revenue sharing funds to cover loan liabilities.

\* Federal share of loan guarantees not to exceed \$500 million at any one time. Authorization for direct loans placed at \$100 million for FY 1975.

### *Miscellaneous*

*Adjustment Assistance Evaluation.*—No provision.

*Runaway Plants.*—No provision.

*Trade Statistics Monitoring System.*—No provision.

### *Miscellaneous*

*Adjustment Assistance Evaluation.*—Adjustment assistance programs to terminate on September 30, 1980; GAO to report on program effectiveness by January 30, 1979.

*Runaway Plants.*—Firms moving abroad directed to give workers 60 days advance notice, to apply for and to use adjustment assistance, and assist in job replacement.

*Trade Statistics Monitoring System.*—Program established to monitor import statistics to detect abrupt changes in import flows.

# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

HOUSE BILL

COMMITTEE BILL

## TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES

Sections 301-341

### *Foreign import restrictions or export subsidies*

- (1) Authorizes President to retaliate against unjustifiable or unreasonable tariff or other import restrictions of foreign governments:
  - \* no time limitation
  - \* complex hearing procedures
  - \* Congressional veto procedure applies

### *Foreign import restrictions or export subsidies*

- (1) Retaliation authority expanded to permit response (including restrictions on foreign services) to unjustifiable or unreasonable restrictions on *U.S. services* and *access to supplies*:
  - \* no time limitation
  - \* complaint procedure established; hearings procedure can be bypassed where expeditious action required
  - \* Congressional veto procedure applies to retaliation on MFN basis.
- (2) Antidumping:
  - \* Time limits imposed on Secretary of Treasury
    - (a) proceeding notice within 30 days of complaint
    - (b) investigation of injury at early stage
    - (c) tentative price discrimination determination within 6 months (9 months in complicated cases)

- (2) Antidumping:
  - \* 6 month time limit (9 months in complicated cases)
  - \* Guaranteed hearing for foreign manufacturer or importer
  - \* Provides for procedures to cover below-cost sales and state-controlled economies.

(d) final determination within 3 months of tentative determination

- \* Guaranteed hearings for any interested party.
- \* Procedures for below-cost sales and state-controlled economies retained, and procedures to cover multinational corporation dumping added.
- \* Explicit language authorizing judicial review.

(3) Countervailing duties:

- \* 6-month limit for a preliminary determination and 12-month limit for a final determination.
- \* Countervailing duties applicable to duty-free items after injury determination.
- \* Secretary given discretion not to apply duties for 2-year period, *but* only when certain conditions are met, including the substantial reduction or elimination of the adverse effect of the bounty or grant.
- \* One-House Congressional disapproval procedure applies.
- \* House language permitting Secretary discretion in not applying countervailing duties to quota items deleted.
- \* Judicial review provided.

(4) Unfair import practices:

- \* 1 year time limit (18 months in complicated cases). Time period suspended when Commission proceedings are enjoined or suspended.
- \* Commission to hear legal and equitable defense in patent-based cases.
- \* Commission to consult with other government agencies.

(3) Countervailing duties:

- \* 1-year time limit
- \* Allows for findings on duty-free articles if injury exists
- \* Permits Secretary not to apply provision during negotiations
- \* Provides judicial review

(4) Unfair import practices:

- \* Permits Tariff Commission to issue exclusion orders if imports violate U.S. patent laws
- \* No time limits



# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

## HOUSE BILL

## COMMITTEE BILL

### TITLE III. RELIEF FROM UNFAIR TRADE PRACTICES—Continued

#### Sections 301-341

\* In providing remedies, Commission to consider the effect on:

- (a) general health and welfare,
- (b) competition, and
- (c) consumers.

\* Commission authorized to issue cease and desist orders and/or to exclude articles from entering in all unfair import cases, patent and nonpatent. President can overturn Commission remedy within 60 days.

\* U.S. Government imports excluded from patent-based actions.

### TITLE IV. TRADE RELATIONS WITH COMMUNIST COUNTRIES

#### Sections 401-407

(1) President authorized, under specified conditions, to grant most-favored-nation treatment to countries not currently receiving MFN treatment

(2) Country must enter into a bilateral or multilateral trade agreement

#### Sections 401-409

(1) President still authorized to grant most-favored-nation treatment but standards are stricter

(2) Country must enter into a separate bilateral trade agreement; GATT membership alone not sufficient

(3) MFN treatment would remain in effect only so long as trade agreement remained in force

(4) Bilateral agreements would include:

- \* life span not longer than 3 years (renewable)
- \* suspension or termination for national security reasons
- \* safeguards against disruption of domestic markets
- \* protection of patents
- \* settlement of commercial disputes
- \* consultative procedures

(5) Freedom of emigration.—No country would be eligible to receive MFN treatment, U.S. Government credits or investment guarantees if the President determines that the country:

- \* denies its citizens the right to emigrate,
- \* imposes more than a nominal tax for emigration, or
- \* otherwise imposes more than a nominal tax or other charge on any citizen as a result of his desire to emigrate

(6) Market disruption provision.—President could impose import relief measures if the Tariff Commission determined imports from Communist countries were causing market disruption and material injury. Market dis-

(3) No change

(4) Bilateral trade agreements would include:

- \* life span not longer than 3 years (renewable)
- \* a satisfactory balance-of-concessions in trade and services
- \* suspension or termination for national security reasons
- \* safeguards against actual or prospective imports that could cause market disruption
- \* protection of patents and copyrights
- \* trade promotion arrangements
- \* consultative procedures, and
- \* other arrangements which will promote the purposes of the Act.

(5a) Freedom of emigration.—Provisions of House bill continued unchanged.

(5b) Personnel Missing in Action.—Country would not be eligible to receive MFN treatment, U.S. Government credits or investment guarantees, or be a party to a title IV bilateral trade agreement if the President determines that the country is not cooperating with the U.S. to:

- \* achieve an accounting of U.S. personnel missing in Southeast Asia
- \* repatriate living personnel
- \* return the remains of those dead.

(6) Market disruption provision.—President could impose import relief measures if:

- \* International Trade Commission made a determination of market disruption;

# IV. COMPARISON OF THE MAJOR PROVISIONS OF THE HOUSE BILL AND COMMITTEE ON FINANCE AMENDMENTS TO H.R. 10710, THE TRADE REFORM ACT OF 1974

## HOUSE BILL

## COMMITTEE BILL

### TITLE IV. TRADE RELATIONS WITH COMMUNIST COUNTRIES—Continued

#### Sections 401-407

ruption would be deemed to exist whenever imports were:

- \* substantial,
- \* increasing rapidly, absolutely and relative to domestic consumption, and
- \* being offered at prices substantially below those of comparable domestic articles

#### Sections 401-409

- \* the President takes emergency action pending a Commission determination.

In addition, STR could be petitioned to implement the safeguard provisions of Title IV bilateral trade agreements. Market disruption procedures would apply to any Communist country including those already receiving MFN, i.e., Poland and Yugoslavia.

Market disruption would be deemed to exist whenever imports were:

- \* being, or likely to be, entered in increased quantities so as to be a significant cause of, or threat of, material injury.

(7) Proclamations and trade agreements under these provisions are subject to one-House Congressional veto procedure

(7) New bilaterals subject to Congressional approval procedures; those concluded before enactment subject to Congressional veto procedure, as are all bilateral renewals.

(8) Czechoslovakia not eligible for MFN treatment, U.S. Government credits or investment guarantees, or monetary gold return until it first settles all principal amounts owed to U.S. citizens or nationals.

(9) U.S. Government credits and investment guarantees with title IV countries made subject to Congressional veto procedure (one-House disapproval), initially after date of enactment and on an annual basis thereafter.

## TITLE V. GENERALIZED TARIFF PREFERENCES

### Sections 501-505

- (1) Authorizes President to extend duty-free treatment to products imported from developing countries
- (2) Beneficiary developing countries designated by President; 26 countries specifically excluded:

(1) No substantial changes.

(2) Same 26 developed countries specifically excluded, *and, in addition:*

- \* No Communist countries
- \* No members of OPEC

\* No members of international cartels which disrupt price and supplies, except countries excluded under this or the preceding category may receive preferences if they sign trade agreements assuring the U.S. reasonable access to articles important for U.S. economic requirements.

\* No countries which grant reverse preferences which have a significant adverse effect on U.S. commerce

\* No countries which have nationalized or otherwise expropriated property without prompt and adequate compensation

\* No countries which do not try to prevent narcotics and other controlled substances from unlawfully entering the U.S.

(3) Value added must be at least 35 percent from a beneficiary developing country, or 50 percent from customs unions or free trade areas designated by the President as one country for the purposes of Title V.

(4) Articles subject to national security actions also excluded.

(3) To be eligible, articles must be imported directly from the developing country; the value added in that country must be at least a minimum percentage of the value of the article (to be set at from 35% to 50%)

(4) Excludes articles subject to escape clause relief,

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HOUSE BILL

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TITLE V. GENERALIZED TARIFF PREFERENCES—Continued

Sections 501–505

- (5) Excludes an article imported from any one country if the imports of the article from that country exceed \$25 million or 50% of total U.S. imports of that article
- (6) Provision limited to 10-year duration; complete report to Congress after 5 years

- (5) \$25 million value limitation escalates in subsequent years in proportion to changes in the U.S. gross national product over the base year 1974. 50 percent ceiling not applicable to articles where the U.S. produces no similar products.
- (6) No change.
- (7) National interest waiver of 50 percent and \$25 million ceilings to apply only to countries meeting certain criteria.

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TITLE VI. GENERAL PROVISIONS

Sections 601–606

- (1) Standard general provisions and definitions.
- (2) International Drug Control.—President directed to embargo trade and investment with countries that do not try to prevent illegal entry of narcotics into the U.S.

Sections 601–611

- (1) Standard general provisions and definitions.
- (2a) Embargo deleted, but President required to report on foreign drug traffic control.
- (2b) Prevention of unlawful drug traffic made a criterion for generalized system of tariff preferences in Title V.
- (3) Immunity from treble damages and other Federal and State antitrust penalties for those persons who participated in the voluntary steel export limitations to the U.S.

(4) Secretaries of Treasury and Commerce and International Trade Commission directed to collect and compile comparable statistics on imports, exports, and domestic production.

(5) Review of 1971 import surcharge protests extended to five years.



## **V. GENERAL DESCRIPTION OF THE BILL**

### **Title I—Negotiating and Other Authority**

#### **CHAPTER 1. TRADE AGREEMENT AUTHORITY**

##### **BASIC AUTHORITY TO ENTER INTO TRADE AGREEMENTS**

The Committee bill, like the House bill, would authorize the President to enter into trade agreements with foreign countries or instrumentalities of foreign countries (such as the Commission of the European Communities) during the five-year period following the date of enactment of the legislation. The President could enter into trade agreements whenever he determines that existing duties or other import restrictions of any foreign country or of the United States unduly burden and restrict the foreign trade of the United States, and that the purposes of the bill would be promoted by such trade agreements.

The President has not had authority to enter into trade agreements and to proclaim related rate changes since the expiration of the authority contained in the Trade Expansion Act of 1962 on June 30, 1967. The United States and over 100 other countries committed themselves in Tokyo in September 1973 to a new round of trade negotiations originally intended to be concluded in 1975. The Committee feels that United States' participation in this negotiation is essential for the preservation of world economic order.

At the same time, it is clear that a traditional tariff cutting negotiation will not get at the roots of the serious problems facing the world economy. The worldwide inflation or "stagflation" must be attacked in a comprehensive and cooperative spirit by all countries. The United States must assume a leadership role in international economic affairs. In order to assume that role it must first develop a policy which is acceptable to the Nation. The new trade negotiations must deal with difficult issues including reform of the international trading rules and the harmonization, reduction and elimination of non-tariff barriers on both industrial and agricultural products. Therefore, this bill directs the President to negotiate new international trading rules which, together with reformed monetary rules, could set the stage for continued growth in the world economy in a climate of economic cooperation.

It is essential that the Congress, which has the constitutional authority to lay and collect duties and to regulate commerce with foreign nations, provide a mandate for the Executive to enter into these negotiations. It is also essential, however, that the Congress and the various segments of our economy which are likely to be importantly affected by trade negotiations, be fully involved in the negotiating process.



## BASIC AUTHORITY TO MODIFY RATES OF DUTY

## (Section 101)

The Committee bill would authorize the President to increase, decrease, or continue any existing duty, to continue any existing duty free or excise treatment, and to proclaim new duties required or appropriate to carry out trade agreements with foreign countries or instrumentalities negotiated pursuant to section 101. The exercise of this authority would be subject to the specific limitations described below and would also be conditioned by certain determinations the President would be required to make and by certain prenegotiation procedural steps he would be required to follow.

*Tariff Reduction Authority.*—The House bill would have granted the President authority to enter into trade agreements and to proclaim reductions in United States duties according to the following limits:

*House bill:**If existing duty is—**Tariff may be cut up to—*

5 percent ad valorem or less--	100%
Between 6 and 25 percent ad valorem-----	60%
More than 25 percent ad valorem.	75% (but not below 10 percent ad valorem)

The Committee bill would grant authority to enter into trade agreements and proclaim duty reductions according to the following limits:

*Committee bill:**If existing duty on January 1,  
1975, is—**Tariff may be cut up to—*

10 percent ad valorem or less--	100%
Over 10 percent ad valorem---	50%

The authority granted under the Committee bill would, if fully utilized, permit 85% of the United States imports to become duty-free. In 1972, 32% of United States imports, by value, were duty-free, while 53% were subject to duties of 10% or less.

Among industrialized countries, there is a broad range of tariff and nontariff barriers covering similar articles of commerce. The Committee's bill would require that a principal U.S. negotiating objective would be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in the United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector. The following table shows a comparison of industrial tariffs for the United States, Canada, Japan and the European Communities.

TABLE 7.—INDUSTRIAL SECTORS: TRADE WEIGHTED MFN RATES OF DUTY, DUTIABLE IMPORTS ONLY, FOR THE UNITED STATES, CANADA, JAPAN, AND THE EUROPEAN COMMUNITY

Sector	Percent ad valorem equivalent				Country with lowest rate <sup>1</sup>
	United States	Canada	Japan	European community	
1-1 Nonelectrical machinery.....	5.7	11.2	12.0	6.6	United States.
1-2 Transportation equipment.....	4.1	12.5	12.8	7.9	Do.
1-3 Ores, metals and metal manufacturers.....	6.3	12.4	6.7	7.0	Do.
1-4 Chemicals.....	9.1	13.9	10.3	11.3	Do.
1-5 Textiles.....	25.0	23.8	12.7	13.2	Japan.
1-6 Electrical machines and apparatus.....	7.2	15.5	11.7	9.3	United States.
1-7 Pulp, paper and paperboard, and manufacturers.....	5.0	15.5	5.6	8.5	Do.
1-8 Coal, petroleum, natural gas.....	4.1	7.6	14.1	4.6	Do.
1-9 Mineral products and fertilizers, ceramic products and glass.....	16.6	14.8	9.6	8.3	European community.
1-10 Professional, scientific and controlling instruments, photographic apparatus, clocks and watches.....	12.1	13.5	9.7	10.4	Japan.
1-11 Wood and cork manufacturers.....	12.1	13.4	15.4	9.6	European community.
1-12 Precious stones, precious metals and manufacturers.....	7.4	22.0	5.5	6.9	Japan.
1-13 Rubber and rubber manufacturers.....	4.4	13.7	8.6	8.0	United States.
1-14 Raw hides and skins, leather and furskins and manufacturers.....	8.8	14.6	10.8	6.6	European community.
1-15 Footwear and travel goods.....	11.2	23.5	14.9	12.0	United States.
1-16 Musical instruments, sound recording or reproduction apparatus.....	6.7	12.9	10.0	8.3	Do.
1-17 Firearms, ammunition, tanks and other armored fighting vehicles.....	9.4	16.6	20.9	9.0	European community.
1-18 Furniture.....	7.6	19.0	10.7	8.4	United States.
1-19 Toys and sporting goods.....	13.9	18.3	13.3	12.8	European community.
1-20 Photographic and cinematographic supplies.....	3.5	16.2	22.4	7.8	United States.
1-21 Works of art and collectors' pieces.....	7.5	21.3	( <sup>2</sup> )	( <sup>2</sup> )	Do.
1-22 Office and stationery supplies.....	11.9	17.7	16.3	9.2	European community.
1-23 Manufactured articles (not elsewhere specified).....	9.9	17.5	12.2	8.5	Do.

<sup>1</sup> The United States has the lowest average level of duties in 13 of the 23 categories; the European community has the lowest in 7 and Japan in 3. Canada has highest in 15 sectors.

<sup>2</sup> Not available.

Source: Trade Barriers, vol. 2, pt. 1, ch. IV, pp. 47-49, a Report to the Committee on Finance and to the United States Senate by the U.S. Tariff Commission, April 1974.

In 13 of the 23 categories, the United States had the lowest average duties. The European Community had the lowest average duties in 7 and Japan in 3.

The results of a recent study by A. J. Yeats\* on the "nominal" tariffs and the "effective" tariffs in the United States, the European Community, and Japan are even more revealing. The theory of the "effective" tariff protection argues that the protection of value-added (the "effective" tariff), rather than the duty on the product itself (the "nominal" tariff) is more relevant in any analysis of trade barriers imposed by a nation's tariff structure than the statutory rate. Protection of value-added is the primary concern of a domestic producer who is influenced by whether and to what extent tariffs permit production at a direct higher cost than that which would be obtained under free trade conditions. Clearly, the results of this study, shown below, indicate that the European Community and Japan have substantially higher effective tariff rates than the United States.

	EEC		Japan		United States	
	Nominal	Effective	Nominal	Effective	Nominal	Effective
Median tariff.....	12.2	33.1	16.5	45.4	8.6	18

Tariff rates on agricultural products often understate the degree of protection afforded by nontariff barriers, including variable levies, quotas and other restrictions. The tariff rates shown in the following table, however, still indicate a wide variety of tariffs among industrial countries in agricultural products. Variable import levies are, by their nature, highly protectionist. The "effective" tariff rates in the European Community are therefore many times higher than are shown in Table 8 below. The Committee believes that restrictions on agricultural trade must be dealt with in conjunction with restrictions on industrial trade. The United States has a comparative advantage in the production of many agricultural products; it cannot afford to permit agricultural barriers to remain "sacred" in this negotiation.

\*A. J. Yeats, "Effective Tariff Protection in the United States, the European Economic Community and Japan". *The Quarterly Review of Economics and Business*, Vol. 14, Summer, 1974.

TABLE 8.—AGRICULTURAL PRODUCTS: AVERAGE MFN TARIFFS  
FOR SELECTED COUNTRIES <sup>1</sup>

Country	Simple arithmetic average <sup>2</sup>	Trade weighted average
All products:		
United States.....	15.1	4.8
Canada.....	9.6	5.7
Japan <sup>3</sup> .....	40.6	27.4
European Community <sup>4</sup> .....	16.5	8.4
United Kingdom <sup>5</sup> .....	10.8	5.0
Dutiable products:		
United States.....	16.8	8.5
Canada.....	13.1	9.9
Japan <sup>3</sup> .....	44.2	39.7
European Community <sup>4</sup> .....	17.9	13.9
United Kingdom <sup>5</sup> .....	12.7	9.9

<sup>1</sup> The averages shown were calculated using trade data for 1970, and rates of duty scheduled to be in effect after implementation of Kennedy Round concessions. Japan, however, has made significant further temporary reductions in about ¼ of its rates which were used in the calculations. More than half of the reductions were by 20 percent, and most of the remainder were by amounts ranging from 33 percent to complete removal of the duty.

<sup>2</sup> The implicit weight contained in a simple average is the number of tariff lines in the schedule. Thus the average is in fact weighted by the degree of detail within the tariff schedules.

<sup>3</sup> Averages for Japan were calculated using rates which were higher than those being applied in 1974. (See footnote 1.)

<sup>4</sup> Rates shown for the European Community reflect fixed tariffs only and do not include variable levies applicable to a wide range of agricultural products. If data were available to reflect the variable levy charges, the rates would be very substantially higher than indicated here.

<sup>5</sup> The rates shown for the United Kingdom reflect fixed tariffs only and do not reflect variable levies applicable to a limited number of products in the year for which the averages were calculated.

Source: Compiled by the staff of the Committee from national tariffs and trade statistics.

*Tariff increase authority.*—The Committee bill, like the House bill, would permit an increase in the rate of duty on any article to a level 50% above the column 2 rate or 20% ad valorem above the existing (column 1) rate on January 1, 1975, whichever is higher. The rate set forth in column number 2 of the Tariff Schedules of the United States as in effect on January 1, 1975, reflects the statutory rates of duty in effect on July 1, 1934, except where the column 2 rate may have been changed through subsequent legislation. In the interest of clarity and simplicity, the Committee amended the House bill to make direct reference to the column 2 rate, as of January 1, 1975. It is expected that this authority would be used primarily to fulfill United States commitments in trade agreements which involve harmonization of tariff disparities in various sectors of our economy.

## NONTARIFF BARRIERS AND OTHER DISTORTIONS OF TRADE

## (Section 102)

The negotiators in the Kennedy Round of trade negotiations concentrated their efforts on reducing tariff barriers to trade. There was no major progress made in coping with the difficult problems posed by other barriers to, or distortions of, international trade, now collectively referred to as nontariff barriers (NTB's). Since the Kennedy Round, nontariff barriers to trade have assumed a greater significance. Moreover, the need for new rules and procedures governing access to supplies has been dramatically underscored in recent months.

Section 102(a) of the House bill states that Congress finds that barriers to (and other distortions of) international trade are reducing the growth of foreign markets for the products of United States agriculture, industry, mining and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, and preventing the development of open and nondiscriminatory trade among nations. The Committee amended the House bill expressly to include as barriers to trade those which are "*adversely affecting the United States economy*" and "*preventing fair and equitable access to supplies*". Distortions of international trade adversely affecting the U.S. economy are intended to cover foreign subsidies on imports into the United States which impact on the domestic economy. Barriers preventing access to supplies represent perhaps the most critical issue facing the world economy at present.

The Committee agreed with the provision in the House bill urging the President to take all appropriate and feasible steps within his power (including the full exercise of the rights of the United States under international agreements) to reduce or eliminate barriers to, and other distortions of, international trade. The Committee, however, felt that it was important to give the authority to the President to *harmonize* as well as reduce or eliminate barriers to trade. Harmonization of barriers to trade means the achievement of roughly equivalent competitive opportunities for the commerce of the United States in foreign markets.

The Committee also felt strongly that barriers affecting services as well as goods should be eliminated. These would include, but not be limited to, barriers involving transportation of goods and persons, insurance, and other important commercial services associated with international trade.

Nontariff barriers to, and distortions of, trade cover a variety of devices which distort trade, including quotas, variable levies, border taxes, discriminatory procurement and internal taxation practices, rules of origin requirements, subsidies and other direct and indirect means that nations use to discourage imports or artificially stimulate or restrict exports. Committee amendments clarify that: (1) agreement on the use of subsidies would be within the authority of section 102 and (2) section 102 would authorize agreements involving an obligation to refrain from imposing nontariff barriers and other trade-distorting measures where none presently exist.

*Consultation Procedures; Packaging of Nontariff Barrier Agreements for Submission to Congress.*—Under the Committee bill, before the President enters into any trade agreement providing for the reduction,

harmonization, or elimination of a nontariff barrier, he shall consult with appropriate committees of the House and the Senate having jurisdiction over legislation involving the subject matter affected by such trade agreement. The purpose of this consultation would be to determine the advisability of such agreements as well as matters relating to their implementation, changes in domestic legislation or administrative procedures and therefore require implementing legislation, and the manner in which specific nontariff barrier agreements may be combined for submission to Congress. No nontariff barrier trade agreement could be entered into by the President prior to such consultation. Generally, the Committee believes that such agreements should be as self-contained and homogeneous (dealing with comparable barriers) as possible. It would be undesirable, and perhaps self-defeating, to combine many unrelated trade agreements affecting various U.S. laws into a single, omnibus package.

In particular, the Committee felt that any trade agreements affecting U.S. statutes, or the administration thereof, concerning unfair or anti-competitive trade practices should be submitted to the Congress in packages which are as homogeneous as possible, and not combined with other non-germane trade agreements. Further, the Committee feels strongly that trade agreements should not be entered into which would weaken U.S. statutes dealing with unfair foreign trade practices. These would include U.S. statutes dealing with injurious price discrimination (dumping), unlawful bounties or grants, and unfair methods of competition in the importation of articles into the United States.

The Committee also understands that existing administrative authority will not be used to implement any agreement resulting from trade negotiations entered into under this Act which affects the application of Section 22 of the Agricultural Act of 1933, as amended (7 U.S.C. 624). It is further understood that any trade agreement which would alter or amend section 22 of the Agricultural Adjustment Act, or affect the application thereof, would have to be submitted to the Congress, as would any other agreement under section 102, and be approved by both Houses of Congress under the positive approval procedure before it could become effective as U.S. law or administrative practice.

*Positive Congressional Approval of Nontariff Barrier Agreements.*—Because of the variety of nontariff barriers subject to international agreement, the Committee did not deem it feasible to attempt to frame an acceptable delegation to the President of prior authority to implement such agreement. The Committee bill would provide that negotiated agreements under sections 102—most of which unquestionably will involve substantial changes in U.S. laws and administrative practices—should be approved by both Houses of Congress, rather than becoming law within 90 working days subject only to a veto of either House as under the House version.

The procedure adopted by the Committee would assure that no nontariff barrier trade agreement entered into under section 102, whether or not it changed domestic law, could enter into force with respect to the United States unless and until both Houses of Congress have approved the agreement, and any implementing legislation if necessary, by the adoption of the "implementing bill" under the positive approval procedure.

The House bill would have required the President to submit, not less than 90 days before the day on which the President enters into a trade agreement affecting nontariff barriers, notification to the Senate and the House of Representatives of his intention to enter into such an agreement. The agreement, along with any implementing orders would enter into full effect, with respect to United States domestic law, as well as internationally, 90 days after his submission to Congress, *unless* within that 90-day period either House adopted by an affirmative vote of the majority of those present and voting a resolution of disapproval with respect to the agreement.

The Committee bill, on the other hand, would provide that nontariff barrier agreements under section 102 *cannot* enter into effect with respect to U.S. domestic law, or internationally with respect to the United States, *unless* both Houses of Congress, by a majority vote of those present and voting, approve implementing legislation. In order to assure, to the maximum extent possible consistent with the rules of both bodies, that a vote will be taken on such trade agreements, the Committee has provided procedural rules under Section 151 of the bill involving time limits, discharge petitions, limitations on debates and a prohibition of amendments.

The Committee feels that a two-House approval of proposed changes in domestic law would not present the constitutional problems which are raised by the House provision allowing a one-House veto of a change in domestic law negotiated by the President.

Under the positive approval procedure established by the Committee, an implementing bill for each trade agreement would be referred to the committee (or committees) having jurisdiction over the matter. The committee (or committees) would have 45 days during which its House is in session to conduct hearings and consider the implementing bill. Each implementing bill would contain provisions approving: (1) the agreement, (2) any accessory implementing legislation, and (3) a statement of any implementing administrative action. The House bill would have provided only 7 calendar days (*including* days when either House is not in session) for committee hearings and consideration of these agreements.

Under the Committee bill, if the committee(s) had not reported out the implementing bill within the 45 day period, the committee(s) would be discharged from further consideration of the bill and it would be placed on the appropriate calendar. The Committee bill states that the vote on final passage of the implementing bill shall be taken in each House on or before the close of the 15th day after the bill is reported by the committee(s) of that House to which it was referred, or after such committee(s) had been discharged from further consideration of the legislation.

There may be circumstances, such as the need to pass emergency legislation or because of other scheduling problems, in which a House may not be able to proceed with a vote on the implementing bill by the 15th day following its report or discharge from the committee. In such cases, the implementing bill could still be approved by the House concerned within a reasonable period after the 15th day. In addition, it is the Committee's intent that any implementing bill could be resubmitted to both Houses of the Congress following its rejection (formal or otherwise) by either one of them, providing that the trade agreement itself or the implementing legislation was sufficiently changed to meet the objections of the disapproving House(s).

With respect to revenue measures, which, under the Constitution, must originate in the House of Representatives, the Senate committee(s) to which the "implementing revenue bills" would be referred would be provided 15 days in which the Senate is in session after the House bill is received by the Senate (or, if later, before the close of the 45th day after the same implementing bill was introduced in the Senate) in which to act on the implementing legislation. After that time the Senate committee(s) would be automatically discharged from further consideration of such bill and it would be placed on the Senate Calendar. As in the case of non-revenue implementing bills, Section 151 of the Committee bill states that the vote on final passage would be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee(s) of the Senate to which it was referred, or after such committee(s) have been discharged from further consideration of the bill.

For the purpose of this approval procedure, days are defined to exclude any day on which either House considering a matter is not in session. Thus, for example, the Senate would have 60 days in which it is in session to consider implementing legislation involving nontariff barriers; 45 days in the appropriate committees and 15 days on the floor. A more detailed analysis of this approval procedure is contained in the discussion on Chapter 5 of Title I of the General Description.

These procedures were adopted to provide the maximum assurance possible that the negotiated trade agreements would be voted on by the Congress. The consultation procedures are intended to provide an opportunity for close cooperation between the Congress and the President and to avoid transmission of trade agreements unacceptable to the committees and to the Congress.

*Non-MFN Application of Nontariff Barrier (NTB) Agreements.*—The Committee attaches great importance to the successful negotiation of nontariff barriers and believes that the widest possible participation of the trading nations of the world in such negotiations should be encouraged. Accordingly section 102 of the House bill has been amended to permit the limitation of the benefits and obligations of nontariff barrier agreements to the parties to such agreements. The Committee bill would also authorize any such agreement to distinguish between the benefits and obligations applicable to different classes of signatories. Many nontariff barrier agreements by their nature cannot be applied to all countries. For example, an agreement which provided that health inspection of animals at the border would not be required, given an adequate inspection in the country of origin pursuant to internationally agreed rules, could logically be applied only to countries able to meet the agreed international standard.

In order to induce other countries to sign NTB agreements, it will often be necessary in this new round of negotiations to apply the benefits of such agreements only to signatories and, in certain cases—as indicated above—to differentiate between the rights and obligations of different classes of signatories (e.g. between developed and underdeveloped nations). Currently, for example, the principal subsidies obligation of the GATT is adhered to by only 17 countries, but the obligation not to subsidize under that provision is extended by



signatories to all GATT members. There is little incentive for other countries to become signatories if they can receive all the benefits without incurring any of the obligations, merely by failing to adhere to the obligation themselves. The Committee does not intend that Section 102(f) be used to discriminate between countries for reasons other than that a country has not agreed to participate in the agreement, or—with respect to countries which do participate—on the basis of significant differences in the level of economic development.

#### OVERALL AND SECTOR NEGOTIATING OBJECTIVES (Sections 103–104)

The Committee modified the House bill with respect to negotiating objectives. In addition to amending the long title as well as the statement of purposes contained in section 2 of the bill, the Committee agreed to an overall as well as a sector negotiation provision which reads as follows:

##### SEC. 103. OVERALL NEGOTIATING OBJECTIVE

The overall United States negotiating objective under sections 101 and 102 shall be to obtain more open and equitable market access and the harmonization, reduction, or elimination of devices which distort trade or commerce. To the maximum extent feasible the harmonization, reduction, or elimination of agricultural trade barriers and distortions shall be undertaken in conjunction with the harmonization, reduction, or elimination of industrial trade barriers and distortions.

##### SEC. 104. SECTOR NEGOTIATING OBJECTIVE

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in the United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of U.S. agriculture, industry, mining and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible, be conducted on the basis of appropriate product sectors of manufacturing.

(c) For purposes of this section and of section 135, the Special Representatives for Trade Negotiations together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade

Negotiations established under section 135 and after consultations with interested private organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under sections 101 or 102 he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in paragraph (a) is achieved by such agreement in each product sector or product sectors.

The overall negotiating objective is to obtain a more open and equitable market access for United States products. This will result from the elimination, harmonization, or reduction of devices which distort trade. The intent of the Committee is that both industry or agricultural trade barriers be eliminated, harmonized, or reduced. The Committee believes that barriers to U.S. agricultural exports cannot be ignored in this negotiation as was the case, in large measure, in the Kennedy Round. Thus, the words "to the maximum extent feasible, the elimination or reduction of agricultural trade barriers shall be undertaken *in conjunction with* the elimination, harmonization or reduction of industrial trade barriers and distortions," is intended to mean that agriculture shall be included in this negotiation. It is not a directive for cross-sectorial trade-offs between agriculture and industry.

With respect to the principal negotiating objectives described in Section 104 of Title I, the Committee firmly believes that there are a number of sectors which lend themselves to a sectorial negotiation. These include sectors in which there is a considerable degree of direct government intervention in the market and others in which industrial countries and trade blocs maintain protective tariff and nontariff barriers. It may also be true of others where a few producers control a substantial portion of the market. Trade concessions, to the maximum extent feasible, should result in equivalent competitive opportunities among the developed countries of the world in various definable sectors. The requirement for achieving equivalence of competitive opportunities within sectors does not require equal tariff and nontariff barriers for each narrowly defined product within a sector, but overall equal competitive opportunities within a sector. The Committee feels that appropriate product sectors would include, among others, such industries as steel, aluminum, electronics, chemicals and electrical machinery, all of which should lend themselves to a sector negotiating technique. The Committee intends, therefore, that the phrase "appropriate product sectors" include, among others, steel, aluminum, electronics, chemicals and electrical machinery. The Special Representative for Trade Negotiations is expected to work with the sector advisory groups, established under section 135 of the bill, to determine which other sectors would lend themselves to a sector negotiation.

While the bill does not specifically require the establishment of product sectors in agriculture, it is the Committee's belief that there may be instances where a principal negotiating objective should be competitive balance for major agricultural products.

## BILATERAL TRADE ARRANGEMENTS (Section 105)

While the Committee recognizes the major interest of the United States and our trading partners in full participation in the forthcoming negotiations, and believes that such negotiations are particularly important in light of the prevailing international economic situation, the Committee believes that, in any situation in which bilateral negotiations would more effectively serve to promote the economic interests of the United States than multilateral negotiations, such bilateral agreements should be entered into. Section 105 therefore would establish, as a principal objective of the bill, the negotiation of bilateral agreements in any situation in which the President determines such agreements better serve U.S. economic interests than agreements negotiated on a multilateral basis. Such bilateral agreements could be entered into, on a mutually advantageous basis, by the United States and any foreign country, instrumentality, or associated groups of countries. The authorities of this bill would be available for implementation of such agreements in the same manner as for the implementation of multilateral agreements.

The trade agreements program of the United States was never intended to be exclusively, or even primarily, a program of multilateral agreements. The major purpose is reciprocal reduction of trade barriers. The trade agreements program is designed to authorize such international agreements as best serve the economic interests of the United States and the authorities of this bill and other trade legislation should be used for that purpose.

## AGREEMENTS WITH DEVELOPING COUNTRIES (Section 106)

A special problem that has become prominent in past years, and one the Committee believes the negotiations should address, is the need for measures which encourage the economic development of the developing countries and expand the markets for products of such countries and of the United States. Under the provisions of section 106 our negotiators could examine the possibility of mutually beneficial trade agreements with developing countries. Such agreements might include such important matters as mutual access to supplies, technical assistance and other mutually beneficial concessions.

As in the case of all other trade agreements negotiated under section 102, any trade agreements entered into under sections 105 and 106, would have to be approved by both Houses of Congress before they could become effective U.S. law.

## INTERNATIONAL SAFEGUARD PROCEDURES (Section 107)

A second principal negotiating objective provided by the Committee would be to obtain internationally-agreed-upon rules and procedures, in the context of the nontariff barrier negotiations, which would permit the use of temporary measures to ease adjustment to changes occurring

in competitive conditions in domestic markets of the parties to an agreement which could result from the expansion of international trade. Heretofore, there have been no workable voluntary safeguards or internationally-sanctioned orderly marketing procedures. Thus, the Committee bill would provide that negotiation of such a safeguard procedure should be a principal negotiating objective of this legislation. This is consistent with the stated aims in the Tokyo Declaration which, among other things, provides for "an examination of the adequacy of the multilateral safeguard system. . . ."

Any agreement entered into under section 102 may include "safeguard" provisions establishing procedures for:

- (1) Notification of affected exporting countries;
- (2) International consultations;
- (3) International review of changes in trade flows;
- (4) Such adjustments in trade flows which may be necessary to avoid injury;
- (5) International mediation of disputes,
- (6) Appropriate hearings and other public procedures in which interested parties would have the right to participate, and
- (7) Exclusion of parties from compensation, obligations, and retaliation under specified conditions.

Under such an international safeguard mechanism, a country could utilize its domestic procedures to impose such import restrictions as necessary to avoid serious injury. In such cases, payment due the affected parties could still be required under international rules. However, such rules might also permit a country, under specified circumstances, to use the international safeguard mechanism normally without payment of compensation.

#### ACCESS TO SUPPLIES (Section 108)

A final principal negotiating objective to which the Committee bill expressly refers is the need for international agreement governing access to supplies. Recent months have dramatically underscored the inadequacy of current international rules and procedures governing access to supplies and, accordingly, the bill would urge the negotiation of new rules and procedures designed to assure fair and equitable access to supplies. In addition, the Committee believes that the United States should seek such agreements with foreign countries and instrumentalities, on a multilateral basis or otherwise, as may be necessary to assure for the United States the continued availability of important articles at reasonable prices. Special recognition has been given to the need for agreements which will assure the United States the access it needs to important supplies for which the United States does not have, and cannot easily develop, adequate domestic production. The United States, on its part, could offer trade concessions and undertake trade obligations (including assurances of fair and equitable access for foreign countries to U.S. supplies). However, the Committee wishes to emphasize that the problem of supply access goes well beyond articles "important" to the United States. Bananas may not be considered of dire importance to the U.S. economy; oranges may provide an acceptable

substitute. However, the Committee believes that banana cartels are not to be encouraged and that efforts should be made to bring the members of such or other cartels into supply access agreements.

#### STAGING REQUIREMENTS AND ROUNDING AUTHORITY (Section 109)

Section 109(a) of the Committee bill would provide that duty reductions entered into pursuant to authority delegated in Title I would be phased in or staged over a period of time. Whenever a duty is reduced by more than 20 percentage points (*ad valorem*), the reduction is to be staged in equal installments over a period of 10 years. In cases in which the duty reductions are less than 20 percentage points, the duty may be reduced by a maximum of 2 percent *ad valorem* per year. The staging requirement would not apply in the case of duty reduction not exceeding 10 percent of the rate before reduction.

The staging provisions also address the exceptional situation in which it might be necessary to interrupt the implementation of a trade agreement concession, if the rate of duty has been frozen or increased for any reason. This could occur for example, when staging is suspended during the period an import relief measure is applied. In that case, the trade concession rate last in effect must go back into effect for the remainder of the 1-year period that the stage was not in effect due to the suspension. The remaining part of the time limit for that stage must be exhausted before the next stage can go into effect. For example, where a 20 percent *ad valorem* tariff is being reduced to 10 percent *ad valorem* in five equal annual stages if the staging is interrupted 3 months after the second stage begins, the second stage rate would have to be put into effect when the interruption ended for the 9 months remaining before implementation of the third stage. Thus the 16 percent tariff applicable before import relief was granted would be required to continue after the relief had expired, and subsequent reductions to 14 percent, 12 percent and 10 percent would only occur at equal annual intervals thereafter, discounting the time that the import relief had been in effect. In addition, no period during which the implementation of the trade agreement was suspended by a duty continuance or increase shall be used in determining the expiration of the 10-year maximum period for staging. The bill, as passed by the House, could have been interpreted as requiring the suspension of the staging requirements in a case where a trade agreement reduction was not in effect because of a temporary tariff reduction (i.e., resulting, for example, from use of the compensation authority). In such a case, it would clearly not be useful to toll the staging of a trade agreement reduction and therefore the tolling provisions have been amended to expressly limit their application to cases where a duty is maintained or increased.

In order to simplify rates of duty subject to reduction where the application of the limits in section 101(b) would result in a rate other than a whole number or an even half-number, such limits may be exceeded by not more than one-half of 1 percent *ad valorem* for rounding purposes under section 109(b).

## CHAPTER 2. OTHER AUTHORITY

### REFORM OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

#### (Section 121)

The Committee agreed with the House of Representatives that GATT reform must be a major objective of this negotiation. The Committee feels that in many essential respects the GATT is discriminatory, inadequate, and outmoded. The Agreement was written more than 25 years ago when the world economy was totally different. Today, many GATT principles are observed more in the breach. For example, a growing volume and proportion of international trade is transacted on a discriminatory basis in spite of the GATT's cardinal principle—nondiscrimination or "most favored nation." A growing percentage of trade is between parties who offer advantages to each other which are not offered to countries outside the agreement.

Thus, the Committee bill would provide that the President shall take such action as may be necessary to bring trade agreements heretofore entered into (primarily the GATT), into conformity with principles promoting the development of an open, nondiscriminatory and fair world economic system.

While some of the proposed changes may take time to attain and others may prove extremely difficult to negotiate, the Committee has directed that the President seek changes, either directly or indirectly, to reform the GATT especially in the following areas:

(1) The Committee considers it essential to revise the decision-making procedures of the General Agreement to more nearly reflect the balance of economic interests. The number of GATT participants has increased from 19 in 1947, most of which had comparable economic interests, to 87 in 1974, with widely varying economic interests. The countries with the greatest economic interests have become a distinct minority and a real danger exists that, unless the decisionmaking process is changed to reflect the economic balance of interests, the effectiveness of the institution will be jeopardized. To this end, the advantages of mediation panels and of weighted voting as an alternative to the present one-vote-per-country system should be explored.

(2) Article XIX of the GATT should be revised so that it provides a truly international safeguard procedure which takes into account all forms of import restraints that countries use in response to injurious competition or threat of such competition. The Committee does not intend that any modification be so rigid as to make it impossible to protect legitimate domestic interests against injurious competition, nor should it be so flexible as to result in insufficient discipline. The Committee recognizes that an effective safeguard procedure may require that the obligations undertaken by developed and developing countries differ, but believes that care should be taken to assure that any such distinction does not impose an unacceptable burden on U.S. producers.

(3) The Committee recommends that the GATT be extended to conditions of trade not presently covered in order to move toward more fair trade practices. Many agricultural practices, such as export subsidies, production subsidies, and variable protection at the borders, are not adequately or specifically covered by GATT provisions. Existing GATT provisions are also inadequate or nonexistent with respect, for example, to government procurement and rules for applying product standards.

(4) The Committee believes that international fair labor standards and procedures to enforce them should be established. The Committee is including in this bill certain measures to assist in the economic adjustment which may be necessitated by increased imports. It believes, however, that additional steps are needed which would lead to the elimination of unfair labor conditions which substantially disrupt or distort international trade. The international trading community should seek to develop principles with respect to earnings, hours and conditions of employment of workers, and to adopt public petition and bargaining procedures. Efforts should be made to provide private persons the opportunity to appear before international economic organizations to present grievances. At the very least, it would be appropriate to allow governments acting in their behalf to make representations concerning labor conditions.

(5) The Committee also believes that GATT provisions on tax adjustments in international trade should be revised to assure that they will be trade neutral. Present provisions permit adjustments on traded goods for certain indirect taxes but not for direct taxes. The Committee expects that the President will seek such modification of present rules as would remove any disadvantage to countries like the United States relying primarily on direct taxes and put all countries on an equal footing.

(6) The Committee also recommends revision of the balance-of-payments provisions in GATT to recognize import surcharges as the preferred means by which industrial countries may handle balance-of-payments deficits when import restraint measures are required. Such revision should be consistent with whatever arrangements are agreed to in negotiations to reform the international monetary system. In view of recent practice, other countries would probably support revision of the GATT specifically to permit import surcharges or import deposit schemes to be imposed to take care of balance-of-payments problems and to give preference to such measures over quantitative restrictions.

(The following sections represent new principles added by the Committee to section 121(a) of the House bill, which should also be the object of negotiations aimed at GATT reform.)

(7) The Committee believes that international rules and procedures governing access to supplies should be improved and strengthened. The problems of supply access have been prominent in the past months and the Committee believes a major effort should be made on a broad front to establish mechanisms for international cooperation on the questions involved. Appropriate rules would govern export controls and other measures restricting access to supplies, provide for consultation and cooperation among producing and consuming countries with respect to all products which are currently in short supply, or which may become in short supply, and would include provisions with

respect to monopolistic behavior by producing countries. The Committee recognizes that agreement with developing producing countries may be difficult but believes that major efforts should be made for negotiating mutually beneficial arrangements. The Committee also believes that major efforts should be made to establish general rules and principles for guiding all governments on actions affecting access to foreign supplies to assure an orderly international trading system.

(8) Regarding the problem of assuring access to supplies, the Committee believes emphasis should be put upon the development of procedures to allow effective multilateral handling of problems of fair and equitable access to supplies including sanctions against nations which significantly injure the international community by denying fair and equitable access to supplies at reasonable prices.

(9) There is a lack of adequate provision for regular and timely consultations among trading nations on issues regarding trade matters of mutual interest. Closely related is the need for effective procedures to adjudicate international commercial disputes. The Committee believes a major effort should be made in the forthcoming negotiations to remedy these problems.

(10) The most-favored-nation (MFN) principle is the foundation for regulation of international trade, and the Committee is concerned with the erosion of this principle that has taken place since the GATT was established. In particular, the proliferation of special preferential trading arrangements threatens to undermine the MFN principle. The Committee believes a major effort should be made in the forthcoming negotiations to eliminate, insofar as possible, the negative impact of such arrangements.

(11) The past few years have demonstrated the close interrelationship between international trade and monetary policies. The Committee believes that future negotiations should address the need for more flexible monetary mechanisms including the recycling of surplus dollars to prevent serious financial strains on oil-consuming nations.

(12) The forthcoming negotiations should deal with the broad problems posed by subsidies. The Committee believes the present international rules governing subsidies are inadequate. Improved rules must be developed; in particular, the concept of an internationally acceptable export subsidy should be defined and comparable treatment should be given to primary and non primary products.

(13) The extraterritorial application of national laws has, in the past, proved an irritant in trade relations. The Committee believes that rules should be established governing such application of national laws to transnational corporations.

In addition to reform of the GATT articles themselves, the Committee feels that the President should be given authority to enter into trade agreements with like-minded foreign countries or instrumentalities to establish the principles described above. Thus, if GATT reform becomes bogged down because of a failure of a majority of the membership of GATT to agree on common fair trade principles, the President may negotiate with countries who are willing to enter into a fair trade compact with the United States. Such reforms might be incorporated in codes applied by the signatories, which could be implemented in U.S. law under the provisions of section 102 of this bill or by separate legislation. The Committee anticipates that such codes would be made consistent with the overall objectives and



principles of the negotiations. In order to induce maximum participation in such codes, the benefits could be limited to the signatories, and distinction made between the obligations of different classes of signatories (i.e. between developed and underdeveloped countries).

*GATT Authorization.*—For over twenty-five years the United States has participated in the GATT as a result of the Executive Branch signing of a “protocol of provisional application.” The protocol is still in effect. The General Agreement has never been submitted to the Congress for its approval. The Committee bill would authorize an appropriation of such sums as may be necessary to pay for the U.S. share of the expenses of the organization. The U.S. share has been paid until now, with the annual consent of the Congress, from funds appropriated to the Department of State. The authorization provided in section 121(d) of the Committee bill does not imply approval or disapproval of all of the articles of the General Agreement. However, since both the House bill and the Committee amendments call for reform of the GATT articles, it is clear that the Congress does not believe the GATT as currently constituted, is a model of fair trade principles.

*Approval of International Agreements.*—Under the Constitution, the Congress has authority to regulate commerce with foreign nations and to pay and collect duties and taxes. Therefore, the Committee bill requires that all trade agreements, the implementation of which would change Federal law (including a material change in regulation or which are not implemented pursuant to authority explicitly delegated by the Congress, must be submitted to the Congress for approval. This requirement includes revisions of GATT for which no advanced authority has been delegated, and it includes all agreements which have the effect of changing domestic laws of the United States or administrative rules. This provision does not, in any way, restrict the Constitutional powers of the Executive; nor does it prevent the submission of trade agreements, under the normal legislative procedures, including their submission as treaties. The Committee bill explicitly states:

*If the President enters into a trade agreement which establishes rules or procedures, including those set forth in subsection (a), promoting the development of an open, nondiscriminatory, and fair world economic system and if the implementation of any such agreement will change any provision of Federal law (including a material change in an administrative rule), such agreement shall take effect with respect to the United States only if the appropriate implementing legislation is enacted by the Congress unless implementation of such agreement is effected pursuant to authority delegated by Congress. Such trade agreement may be submitted to the Congress for approval in accordance with the procedures of section 151. Nothing in this section shall be construed as prior approval of any legislation necessary to implement a trade agreement entered into under this section. (Sec. 121(c))*

The above provision would require express Congressional approval for trade agreements which require for their implementation a modification of any law (including material change in regulation), provided that the President would *not* be required to submit for approval an agreement implemented pursuant to authority delegated by Congress. The limitation is necessary to assure that (1) an exercise of

authority expressly delegated under the bill (such as the two-year authority to renegotiate tariff agreements in section 124), would not be subject to attack if the resulting agreement is not expressly approved by Congress, and (2) changes in regulation made pursuant to a Congressional delegation would not need further approval. Several sections of trade law authorize the Executive to prescribe regulations governing their administration and Congress would normally have no interest in approving changes in them. For example 19 U.S.C. 1304 authorizes the Secretary of the Treasury to establish regulations relating to the character of words and phrases or abbreviations acceptable for indicating the country of origin of imported articles.

## BALANCE OF PAYMENTS AUTHORITY

### (Section 122)

*Deficit Authority.*—Under the House bill, the President would be authorized, at his discretion, to impose temporary import surcharges and quantitative restrictions to deal with large and serious U.S. balance of payments deficits. Under the Committee bill, the President would be required to impose import restrictions whenever the U.S. faces large and serious balance of payments deficits. However, the President would be permitted to refrain from imposing import restrictions if he determines that they would be contrary to U.S. national interest. If he did not restrict imports, the President would have to inform the Congress and consult with the members of the Senate Finance and House Ways and Means Committees who are to serve as Congressional Advisors under section 161 of the bill, as to the reasons for his determination.

Under the Committee bill, import restrictions proclaimed by the President would not be in effect for a period longer than 180 days (unless a longer period is authorized by Act of Congress). The Committee also felt that the authority to impose surcharges could, in many instances, be applied selectively—that is with respect to the articles of commerce from such countries which have substantial surpluses and which do not take adequate steps to reduce or eliminate their surpluses. The Committee does not feel that across-the-board application of balance of payments measures would be the fairest or most effective way to restore equilibrium to the world economy, particularly in circumstances in which one or several countries are responsible for the disequilibrium by maintaining large and persistent balance of payments surpluses. The intent of this provision is to create incentives for surplus countries which have disproportionate gains in reserves to take voluntarily effective adjustment action to eliminate their surpluses. There remains under the Articles of Agreement of the International Monetary Fund a much greater pressure on deficit countries to adjust than on surplus countries.

In the new era created by the rapid increase in oil prices, it is likely that most oil-consuming countries will face large balance of payments deficits. It appears that the two steps necessary to restore equilibrium in the world economy and to avoid serious disruption are: (1) a significant reduction in the world price of oil and (2) international monetary cooperation to cope with the immediate transfer of wealth including recycling of "petrodollars." However, circumstances can change rapidly and the Committee deems it necessary that the President have authority to impose surcharges and other import restrictions for

balance of payments reasons even though under present circumstances such authority is not likely to be utilized. The importance of providing such authority is manifest in the light of the recent decision by the United States Customs Court which held that the 10 percent import surcharge imposed temporarily in August of 1971 was without advance authority. If that position is upheld on appeal it could involve a substantial loss of revenue to the U.S. Treasury and windfall gains to those importers who passed on the import surcharge to consumers. While the Committee does not wish to take a position one way or the other on the validity of the 1971 surcharge, it does feel the Executive ought to have explicit statutory authority to impose certain restrictions on imports for balance of payments reasons.

Upon the entering into force of new rules regulating the application of surcharges as a part of reform of international balance-of-payment adjustment procedures, the President would be required to impose any surcharge authorized under this section in conformity with such new international rules.

The use of surcharges for balance-of-payments purposes has gained *de facto* acceptance in the General Agreement on Tariffs and Trade over the years. Major industrialized countries which have resorted to surcharges include France in 1955, Canada in 1962, the United Kingdom in 1968, and Denmark and the United States in 1971. Nonetheless, explicit GATT rules on the use of surcharges have never been adopted. Accordingly, the Committee has provided in subsection 122(d) (4) that it is the sense of the Congress that the President seek modifications in international agreements aimed at allowing the use of surcharges in place of quantitative restrictions and providing rules to govern the use of such surcharges as a balance-of-payments adjustment measure within the context of arrangements for an equitable sharing of balance-of-payments adjustment responsibility among deficit and surplus countries.

Subsection 122(e) would provide that actions taken under this balance-of-payments provision must be applied uniformly to a broad range of imported products. However, the President may exempt certain articles or groups of articles because of the needs of the U.S. economy relating to such factors as the unavailability of domestic supply at reasonable prices, the necessary importation of raw materials, and avoiding serious dislocations in the supply of imported goods. In addition, exceptions may be made where import-restricting actions would be unnecessary or ineffective. As indicated in the bill these exceptions are to be uniform as to their application. Examples of situations in which import restricting actions would be unnecessary or ineffective might include, among others, situations where goods are in transit, or situations where commitments for the importation of goods are so far advanced, such as binding contracts, that application of the import restrictions would only result in higher prices for goods to domestic interests. The authority to implement import-restricting measures or to exempt particular products from such measures could not be used for the purpose of protecting individual domestic industries from import competition.

Subsections 122 (f) and (g) would retain the provisions of the House bill dealing with the application of quantitative restrictions under authority of this section, and the authority of the President to suspend, modify or terminate, in whole or in part, any proclamations issued under this section.

Subsection 122(h) would prohibit the President from invoking any provision of law authorizing the termination of tariffs concessions as authority for imposing a surcharge on imports into the United States.

*Surplus authority.*—The Committee bill would also delegate to the President authority to reduce temporarily the duty applicable to any article by an amount not more than 5 percent ad valorem and/or to lower the restrictive effect of, or suspend temporarily, any quantitative limitation applicable to any article whenever the President determines that fundamental international payments problems require special import measures to increase imports:

1. to deal with a large and persistent U.S. balance of trade surplus (as determined on the basis of including the cost of insurance and freight in the value of imports) as reported by the Bureau of Census, or
2. to prevent significant depreciation of the dollar in foreign exchange markets.

The Committee felt it important to alter the sections of the House bill which would have provided authority to reduce tariffs and/or suspend quotas whenever there was a finding of a persistent balance of *payments* surplus, because it is possible, indeed likely, that there will be a large influx of short term and long term funds from oil-producing countries which could create a large *payments* surplus while at the same time, the United States may be suffering a large *trade* deficit. In these circumstances, eliminating or reducing barriers to U.S. imports would not be a proper remedy for a U.S. balance of payments surplus induced by an inflow of "petrodollars".

The Committee bill would also require that actions taken under the balance of payments surplus authority must be on a broad product coverage basis and not with respect to one or more particular product. As in the case of the House bill, the President may impose such import measures only for a period of 150 days and may not apply such measures to any article where he determines that such material injury to firms and workers in any domestic industry including agriculture, mining, fishing or commerce. No action shall be taken to impair the national security or which would otherwise be contrary to our national interests.

#### COMPENSATION AUTHORITY (Section 123)

The purpose of section 123 is to provide the President with authority to compensate foreign countries for increases in U.S. tariffs or other import restrictions when the United States has been found obligated to pay such compensation for trade restrictions imposed pursuant to an import relief finding under section 203. In the past, the Executive has used its general negotiating authority to reduce duties for purposes of compensation. Such authority does not presently exist, since the authority to proclaim duty reductions under section 201 of the Trade Expansion Act expired on June 30, 1967.

Subsection (a) would grant to the President discretionary authority, whenever import relief has been granted pursuant to the escape clause, to enter into agreements with foreign countries and to proclaim new concessions in the form of modification or continuation of any existing duty or continuation of any existing duty-free or excise treatment to the extent he determines necessary or appropriate to maintain a general level of reciprocal and mutually advantageous concessions.

Subsection (b) would limit duty reductions to not more than 30 percent below the existing rate. The President could stage duty reductions if appropriate. Any compensation paid in the form of a reduction of an intermediate stage of duty may reduce such intermediate stage and each following stage by 30 percent, and may provide for a final stage of 30 percent below the final rate proclaimed under section 101. Subsection (b) would also provide rounding authority similar to that in section 103. The Committee adopted an amendment (subsection (b)(4)) which would require the phasing out of duty reductions proclaimed under this section, substantially in accord with the phasing out of import relief granted pursuant to authority in title II. Since import relief must be phased out and eventually terminated, there is no reason to continue to pay compensation when the cause of the compensation is removed.

Subsection (c) provides that no agreement may be entered into under this section for the 5-year period following enactment of the bill during which time compensation agreements may be negotiated and implemented under the basic negotiating authority of section 101.

Subsection (c) would provide that no compensation could be paid under authority of section 123 to any country or instrumentality which has breached trade agreement obligations of benefit to the United States without offering adequate compensation or without any offsetting action by the United States (offsetting U.S. action could exist, for example, where the United States takes retaliatory action or otherwise has reversed trade agreement concessions extended to such country without itself granting compensation).

Subsection 123(d) would require that, during the five-year period of trade negotiations under chapter 1 of Title I, the trade agreement authority under section 101 would be used to negotiate compensation agreements. The Committee amendment would retain the substance of the House provision, while making it clear that import relief actions (and compensation agreements) shall be undertaken during the period of trade negotiations.

The authority could be used when the President has provided import relief pursuant to section 203. In such cases, the United States is required by GATT article XIX to consult with foreign countries having a valid interest as exporters of the products concerned. If a satisfactory arrangement is not made—that is, if compensation is not forthcoming—countries adversely affected have the right under GATT to restore the balance of concessions by increasing or imposing equivalent new barriers on U.S. exports. If, on the other hand, the President could offer corresponding or offsetting tariff reductions on other articles, the balance of concessions could be restored without damaging U.S. exports.

It is not intended that this section be interpreted as requiring the payment of compensation by the United States whenever import relief has been granted pursuant to section 203 or requiring that a foreign country be precluded from compensation if it has taken action pursuant to Article XIX without extending compensatory concessions to the United States. The GATT provides that countries seeking compensation must show that they have been adversely affected, and it is expected that no action would be taken under this section until such a showing has been made.

## TWO-YEAR RESIDUAL AUTHORITY TO NEGOTIATE DUTIES (Section 124)

In order to cope with problems that may develop in the 2 years following the initial trade negotiation period, section 124 would provide the President additional authority, subject to strict limitations and the same legislative standards provided in his basic negotiating authority, to renegotiate tariff agreements. The Committee is informed that this authority may be needed to eliminate tariff discrepancies and anomalies that often become apparent only after the results of the major tariff negotiations are more closely examined.

Subsection (a) would authorize the President to enter into trade agreements and to proclaim modifications or continuance of any existing duty, continuance of duty-free or excise treatment, or additional duties to carry out such agreements with foreign countries. The scope of negotiations under this authority would be limited so that in any one year, duty reductions or continuation of duty-free treatment are limited to articles which account for not more than two percent of the total value of U.S. imports during the previous 12-month period. Duty reductions are limited to 20 percent below the existing rate and no duty rate for any article may be decreased or increased to a rate which is lower or higher than the rate which would have resulted if the maximum authority granted in section 101 had been exercised for that article. In other words, the resulting tariff modification on any article under authority of this section and section 101 may not exceed the limits set forth in subsections 101 (b) and (c). Within such limits each stage of a reduction proclaimed under section 101 (including the final stage) may be reduced by 20 percent. Subsection (c) would also authorize the rounding of duties in the same manner as authorized under sections 103 and 124.

## TERMINATION AND WITHDRAWAL OF AUTHORITY (Section 125)

The bill would continue without change the requirement in previous trade legislation that every trade agreement entered into be subject to termination or withdrawal at the end of a specified period (not to be later than 3 years from the effective date of the agreement). This section would also continue the authorization of the President to terminate, in whole or in part, any proclamation made under the bill. The Committee recommends the continuation of these authorities.

Subsection (c) would provide the President with explicit authority to implement domestic actions, in pursuance of U.S. rights or obligations under any trade agreement, following the suspension or withdrawal of obligations or withdrawal of concessions under such agreements. The authority used in the past for such actions included the termination authority (e.g., sec. 255(b) of the Trade Expansion Act) and the general trade agreement implementation authority (e.g., sec. 201(a)(2) of the Trade Expansion Act).

International actions for which this section would provide domestic implementing authority currently fall generally into three categories. These now occur mainly where the GATT rules allow a country the right to withdraw or suspend tariff concessions owed to other contracting parties to the Agreement. For example, if a foreign country either

invokes GATT article XXVIII to renegotiate concessions or withdraws concessions in the formation of a new customs union under article XXIV:6, with a resulting increase in duties bound in the GATT affecting U.S. exports, the United States has the right to make offsetting withdrawals of concessions unless a settlement is reached on satisfactory compensation. Under GATT article XXVIII, the United States has the right to initiate a unilateral withdrawal of tariff concessions from a foreign country which ceases to be a contracting party. Then too, the United States has a right to modify concessions under article XXVIII and used this right in 1971 to establish a tariff quota on stainless steel flatware.

Withdrawals may be multilateral in form. For example, multilateral offsetting action might be called for against a country whose trade measures cause damage to the trade of third countries in order to obtain its compliance with international rules. For this purpose, the GATT members could authorize collective action under article XXIII.

The purpose of subsection (c) is to enable the President to exercise U.S. rights and obligations under the GATT and other international trade agreements, so as to protect U.S. trading interests. The subsection would authorize the President to give domestic legal effect to the withdrawal or suspension of trade agreement concessions to any foreign country in the exercise of our international rights and obligations. The authority would enable the President to react to actions by other countries and also to implement the withdrawal of U.S. concessions under the renegotiation rights of the GATT. This subsection would authorize the establishment of intermediate rates at any level between those presently in existence and the limits of tariff increases. In addition, subsection (c) would permit the suspension or termination of U.S. obligations or concessions. This authority is necessary to clarify technical issues which hinder flexible administration of the trade agreements program, and is intended to replace the general authority which in the past was used for such purposes.

If the withdrawal takes the form of imposing or increasing tariffs, the new duty rate may be set at any level up to 20 percent ad valorem above the column 1 rate of duty, or 50 percent above the column 2 rate of duty as of January 1, 1975, whichever is greater. For example, if the present tariff is 10 percent ad valorem and the column 2 rate is 40 percent ad valorem, a new tariff could be set at any level between 10 and 60 percent ad valorem. Tariff increases may be applied temporarily, and then returned to concession levels. This section does not contain independent authority to decrease tariffs although the suspension of a previously negotiated tariff increase—such negotiated increases being rare in the past—could have this effect.

The use of this authority would be limited to the exercise of U.S. rights and obligations under international trade agreements. It is not the intention of the Committee that this authority be used either as a substitute or extension of other authorities under the bill or under other trade laws. It could not be used, for example, to impose a surcharge for balance of payments purposes.

The Committee adopted a new provision (new section 125(d)) which would require the President to withdraw trade agreement concessions whenever a foreign country withdraws, suspends or modifies application of trade agreement obligations of benefit to the United States without granting adequate compensation. In such cases the

President, in pursuance of U.S. rights under any trade agreement and to the extent necessary to protect U.S. economic interests (including the U.S. balance of payments), would be required to withdraw, suspend or modify the application of substantially equivalent trade obligations of benefit to such foreign country and to proclaim (under subsection 125(c)) such increased duties or other import restrictions as are appropriate to obtain adequate compensation from such foreign country. The Committee adopted this provision to insure that the President utilize the authority contained in section 125(c) to obtain adequate and equivalent compensation when a foreign country withdraws trade agreement obligations of benefits to the United States. Such compensation could be offered by the foreign country itself or could be obtained through unilateral action by the United States.

Subsection (e) would provide for the continuation of the trade agreement rates of duty for a period of 1 year following the termination, in whole or in part, of trade agreement concessions, or the withdrawal of the United States from such agreements, unless and until the President or Congress acts to modify those rates. Within 60 days following the termination of any trade agreement, the President would be required to submit to Congress recommendations for the maintenance or modification of the rates affected. The President would be authorized to terminate the proclamations giving effect to the trade agreement rates thereby reinstating the prior proclaimed rate, or, if there is none, the statutory rate.

The Executive Branch has requested an explicit procedure for dealing with rate changes following international actions which terminate the effect of international agreements. If domestic tariffs were required to "spring back" to the statutory rate when trade agreements were terminated, the result would be chaotic. A sudden reversion to the 1930 rates would give a severe shock to the economy. Similarly, our export sales could be affected drastically by withdrawal of foreign tariff concessions. Under this provision, a spring-back is expressly prevented for a period of 1 year to permit the President and the Congress to make a considered determination of the appropriate rates. Thus, under this provision, if a trade agreement, or any part of it were terminated, the parties could choose to maintain their tariff concessions for a period of 1 year in the absence of the trade agreement. The United States would thus also be able to apply its concession rates on the basis of *de facto* mutual benefit, pending perhaps the renegotiation of a terminated trade agreement.

Serious problems would be posed if a trade agreement to cut tariffs were terminated. The Committee was concerned both with the possible effects of a sudden return to higher rates of duty and with the possibility that the United States would take no action should other countries terminate their trade agreement obligation to the United States. Clearly, such a situation requires a continuing review by the Congress of future action in the trade agreements program. Thus the Committee has rejected any proposal which would have left the disposition of such terminated rates of duty to the discretion of the President, and adopted the House provision which would require congressional action after recommendation by the President. Under the House bill, the President would be required to hold public hearings prior to the taking of action pursuant to subsection 125(b), (c) or (d). Subsection 125(f) of the Committee bill would permit the President



to hold public hearings after the taking of such action if he determined that prior hearings would be contrary to the national interest because of the need for expeditious action.

## RECIPROCAL NONDISCRIMINATION

### (Section 126)

The Committee feels that the "unconditional" most-favored-nation principle has led, in the past, to one-sided agreements. Under the "unconditional" most-favored-nation principle, the benefits of trade concessions are automatically bestowed upon all countries not specifically denied most-favored-nation treatment, whether or not they have provided reciprocal concessions during the negotiation. Under this principle there is an inherent incentive for countries to "get a free ride," since they would automatically receive the benefits of any trade agreement. The existence of many significant tariff and nontariff barriers in foreign countries and the very small reductions in tariffs of some industrialized countries in the Kennedy Round may be attributable to the realization by certain countries that they could automatically receive all the benefits of the trade agreement without paying any of the costs.

The Committee believes that the nondiscriminatory treatment principle as it applies to multilateral trade negotiations entered into under the authority of the bill should result in concessions by other major industrial countries which provide competitive opportunities in their markets substantially equivalent to those provided in the U.S. market. Since the outset of the successive rounds of multilateral trade negotiations in the post-war period, the possibility has existed that a major industrial country would limit its participation in such negotiations yet nevertheless, through the non-discriminatory treatment principle, benefit from concessions negotiated by others. In trade parlance this is known as the "free-rider" problem. It is the intent of the Committee to close this loophole by requiring that the United States have as its objective that each major industrial country make a contribution to the lowering of trade barriers substantially equivalent to that made by the United States, and that no major industrial country receive benefits from the negotiations substantially in excess of the concessions it has granted.

At the request of the Special Representative for Trade Negotiations, the Committee agreed to provide expressly that nontariff barrier agreements may be entered into discriminately—on other than a most-favored-nation basis—to assure that a foreign country which receives benefits under a trade agreement is subject to the obligations imposed by the agreement. The Committee feels that the principle of reciprocal nondiscriminatory treatment has the same purpose as the non-most-favored-nation application of nontariff barrier agreements sought by the Executive.

No industrialized country should be given a free ride in this negotiation. Nor should any industrialized country provide protection to its industries while expecting others to lower barriers for their exports. The concept of equivalent competitive market opportunities should be a key guide to this negotiation. No industrialized country should expect to have the best of both worlds anymore. The United States should not grant concessions to countries which are not willing to offer

substantial equivalent competitive opportunities for the products of the United States in their market as we offer their products in our market.

The Committee is quite aware that the European Community has concluded, or is in the process of concluding, special commercial agreements with over 80 countries, many of which were former colonies of the member nations. These agreements are discriminatory in nature and often involve so-called "reverse preferences".

Under the Committee amendment, the U.S. negotiator would not seek special advantages for U.S. products in any developed country but *reciprocal* benefits. The Committee believes this was the original intent of the *Reciprocal Trade Agreements* program initiated in 1934 by Secretary of State Cordell Hull.<sup>1</sup>

For these reasons, the Committee adopted a "reciprocal" non-discrimination principle. Under this principle industrialized countries would not get a free ride in this negotiation. The President would be required to determine at the conclusion of all negotiations entered into under this bill, or at the end of the five-year period beginning on the date of enactment, whichever is earlier, whether any major industrial country has failed to make concessions under trade agreements which provide competitive opportunities for the commerce of the United States in such country substantially equivalent to the competitive opportunities provided by concessions made by the United States. The objective would be overall reciprocity—substantially equivalent market access or competitive opportunities on an overall basis. If the President determined that a major industrial country has not made concessions under trade agreements which provide substantially equivalent competitive opportunities for the commerce of the United States, then, with respect to such country or by article produced by country, in order to restore equivalence of competitive opportunities he should:

- (1) proclaim the termination of concessions or refrain from proclaiming benefits of trade agreement concessions made with respect to rates of duty or other import restrictions made by the United States to such country under any trade agreement, and
- (2) recommend to Congress that any legislation necessary to carry out a trade agreement entered into under section 102 shall not apply to such country.

The Committee feels that only when there is fairness and reciprocity in commercial relations among the major industrial countries will the groundwork be laid for the continued movement toward freer trade. The Committee's "reciprocal nondiscrimination" principle should not offend any country which is willing to trade with the United States on the basis of equity and reciprocity. Only if a country insists on gaining advantages for its exporters in the U.S. market without being willing to offer U.S. exporters comparable advantages in its markets would it have grounds for concern over this provision.

For purposes of this provision, major industrial countries would include Canada, the European Economic Community, the individual member countries of the Community, Japan, and any other foreign country designated by the President for purposes of this section.

<sup>1</sup> Current U.S. domestic legislation requires that trade agreements concessions negotiated with one country be automatically extended to all others—whether or not an international commitment such as the GATT would entitle others to such concessions—so long as the recipient does not discriminate against U.S. trade. (See section 251 of TEA.)

## RESERVATION OF ARTICLES FROM NEGOTIATIONS

## (Section 127)

The Committee agreed with the House that no reduction or elimination of existing import restrictions on any product should be authorized by the bill if the President determines that such action would impair national security. A parallel provision is contained in the Trade Expansion Act of 1962 (section 232(a)).

Under section 127(b) of the Committee bill (section 128(b) of the House bill) any article which is subject to an import relief or a national security action would be excluded from any trade negotiations conducted under authority of Title I (and actions under section 122(c)). However, the Committee adopted a limited exception to this provision which would permit the President to negotiate the reduction or elimination of a nontariff barrier (not imposed pursuant to an import relief or a national security action), if the reduction or elimination of such nontariff barrier would not undermine the import relief or national security action. Whether or not the reduction or elimination of a nontariff barrier would undermine the import relief or national security action would depend upon the degree to which the nontariff barrier provides "protection" to the article from imports and the degree to which the existing nontariff barrier was presumably taken into consideration in the initial determination as to whether and to what extent to provide the import relief or national security action. Thus, for example, the President could negotiate a labeling or standards agreement on an article subject to an import relief or national security action, if the resulting agreement would not undermine such action. On the other hand, the President would clearly be prevented from negotiating the elimination of a quota on an article subject to an import relief or national security action, because such elimination would clearly undermine the protection afforded by the import relief or national security action.

The President is also directed to reserve such other sensitive articles as he deems appropriate from the negotiations (or any part thereof). Sensitive articles could include those being injured as a result of dumping and those which have traditionally been reserved from trade negotiations.

In addition, the Committee amended Section 232 of the Trade Expansion Act of 1962 to provide that the Secretary of the Treasury, rather than the Director of the Office of Emergency Planning, (an office which has been abolished and its functions transferred to the Treasury Department) would investigate and determine whether any article is being imported in such quantities or under such circumstances so as to threaten to impair the national security. In making this investigation, the Secretary of the Treasury would consult with the Secretaries of Defense, Commerce, and any other appropriate officer of the United States.

The Committee bill would create a procedure for holding public hearings so that interested parties could present information and advice relevant to a national security investigation. After completing his investigation, within one year, the Secretary would be required to report his findings and recommendations for action to the President. The Committee provided that the President could take such action

and for such time as he deems necessary to adjust imports of the article and its derivative so that such imports will not threaten to impair the national security. However, the President could take no action if he determines that the article is not being imported into the United States in such quantity or under such circumstances as to threaten the national security.



## CHAPTER 3. HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

### INTERNATIONAL TRADE COMMISSION ADVICE

#### (Section 131)

Before entering into proposed trade agreements, the President would be required to make public and submit to the U.S. International Trade Commission lists of articles to be considered for modification or continuance of duties or excise treatment or additional duties in negotiations under sections 101, 102, 123, or 124. In the case of articles considered for duty modification, the list would specify the provision of title I under which such consideration may be given. The President must also seek the advice of the Commission before proclaiming preferences for articles imported from eligible developing countries under title V. It is expected that the President would exclude sensitive articles—those in which substantial duty reductions would likely injure domestic firms and workers—from significant duty reductions under title I or from preferential treatment under title V. The Committee intends that such sensitive articles could include those which are being injured as a result of dumping, and those which have been traditionally reserved from trade negotiations.

The Commission must advise the President, within 6 months, of the probable economic effect of duty modifications on the domestic producers of like or directly competitive articles and on consumers for each article listed. This advice would be sought to assist the President in making an informed judgment of the effect of duty modifications on various segments of the U.S. economy. For the purposes of chapter 3, the President, pertinent agencies in the Executive branch, and the Commission shall also consider the impact of trade agreement concessions on the Commonwealth of Puerto Rico (which is within the customs territory of the United States) and on the insular possessions of the United States. The advice to the President could also include the Commission's views as to whether a duty reduction on any article should be staged over a longer period than the minimum provided in section 107.

The Commission would also report to the President, at his request, on the probable economic effect of the modification or elimination of trade barriers through negotiations under section 102. Such advice should, where feasible, include the probable economic effect on domestic industry and purchasers and on domestic prices and supply of articles. The advice contemplated under this section should include the extent to which market access would be increased or otherwise affected by modification or elimination of the trade barrier.

In preparing its advice, the Commission must hold public hearings and investigate and analyze certain economic factors identical to those listed in the Trade Expansion Act of 1962. It is intended by the Committee that the Commission make a special effort, to the extent feasible, to study foreign production and marketing factors.

## ADVICE FROM DEPARTMENTS AND OTHER SOURCES

## (Section 132)

The President would be required to seek information and advice before entering into any proposed agreement under chapter 1 of this title or sections 123 or 124, and before proclaiming preferences for imports from eligible developing countries under title V, from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State, and the Treasury, and from the Special Representative for Trade Negotiations. He could also seek information and advice from other sources he may deem appropriate. This provision is substantially the same as section 222 of the Trade Expansion Act of 1962. It is intended to assure that the President would receive the views of agencies most concerned with the outcome of the negotiations.

## PUBLIC HEARINGS

## (Section 133)

The bill would require the President to provide for public hearings in which any interested person could present his views on any proposed trade agreement or on the modification of any duty or other import restriction provided for under chapter 1 of this title or sections 123 or 124. Such hearings would also be required before any article is designated an "eligible article" for purposes of generalized tariff preferences for developing countries under title V of the bill. The Committee believes these hearings will be of substantial value in insuring that a full range of views is presented on all proposed trade agreements, including nontariff barrier agreements under section 102. The views presented could relate to any matter relevant to a proposed trade agreement negotiation, including: any article on the list prepared by the Commission pursuant to section 131; any article which should be listed; any concessions which should be sought from other countries; or any other relevant matter. It is the view of the Committee that domestic producers with market access problems abroad should avail themselves of such hearings and other procedures to inform U.S. negotiators of such problems to assure that market access for U.S. exports be pursued to the fullest.

The Committee understands that the hearings required under this section would be held by the Trade Information Committee under the Office of the Special Representative for Trade Negotiations. It is further understood that this interagency committee would be made up of representatives from the Departments who will be actively engaged in the negotiations in order that the views of interested groups would be heard by those who have negotiating responsibility.

## PREREQUISITE FOR OFFERS

## (Section 134)

In negotiating a trade agreement under chapter 1 or sections 123 or 124, the President could make an offer to modify or continue a duty or to continue duty-free or excise treatment or impose additional duties, with respect to any article only after receiving a summary of the public hearings held with respect to that article and advice from the Commission—if received within the 6-months' time limit—of

the probable effects of modifications in customs treatment. These procedures must also be followed with respect to articles being considered for preferential status for a beneficiary developing country under title V of this bill.

## ADVICE FROM PRIVATE SECTOR

### (Section 135)

The multilateral trade negotiations envisaged under this legislation are expected to be the most comprehensive ever conducted. For this reason, the need for the Government to seek information and advice from the private sector is more important than ever before. The purposes of this section are to establish the institutional framework to assure that representative elements from the private sector have the opportunity to make known their views to U.S. negotiators, and to provide the latter a formal mechanism through which to seek information and advice from the private sector, with respect to U.S. negotiating objectives and bargaining positions before and during the multilateral trade negotiations.

This section would provide for the creation of three general types of advisory committees and in addition would require the President to provide opportunity for the submission of information and recommendations on an informal basis by other private organizations or groups. One overall policy-level Advisory Committee for Trade Negotiations would be established. This committee will be composed of representatives of government, labor, industry, agriculture, service industries, consumer interests, and the general public. The Advisory Committee would be composed of not more than 45 members. The broad range of interests to be represented on this committee is intended to provide U.S. negotiators with a balanced view of what objectives U.S. negotiators should pursue in the multilateral trade negotiations. This committee would meet at the call of the Special Representative for Trade Negotiations, who would be its chairman.

In addition, section 135(c)(1) of the Committee bill would amend the House bill to provide the President with authority to establish general policy advisory committees for industry, labor, and agriculture, respectively, to provide general policy advice on any trade agreements negotiated under Sections 101 or 102. Such committees should be, in so far as practicable, representative of all industry, labor or agricultural interests.

Thirdly, the Committee provided that the President should, on his own initiative, or at the request of organizations in particular product sectors, establish such industry, labor, service or agriculture sector advisory committees as he deems necessary for any trade negotiations in Sections 101 and 102.

The requirement that the President also establish advisory committees for particular product sectors to be representative, so far as practicable, of all industry, labor, or agricultural interests in such sector reflects the Committee's concern that in past trade negotiations there has not been adequate input from U.S. producers who are in the best position to assess the effects of removing U.S. and foreign trade barriers on their particular products.

In requiring the President to establish advisory committees at the request of organizations in a particular sector, the Committee recognizes the necessity for reasonable limits on the number of such



committees, and that such committees must be limited in size. The Committee, however, believes that the product lines covered by each committee should be reasonably related. While not specified in the legislation, the Committee considers that approximately 30 or so advisory committees for various sectors may be sufficient to achieve these objectives. It should be clear, however, that the purpose of the procedures provided is to strengthen the hand of U.S. negotiators by improving their knowledge and familiarity with the problems domestic producers face in obtaining access to foreign markets. These committees should therefore be representative of the producing sectors of our economy. They should also include representatives of service industries such as insurance, banking, and transportation. The Committee believes that special consideration should be given to consultation with those representing the interests of small business.

The kinds of advice with respect to particular products which the Committee believes will be useful to U.S. negotiators during preparations for, and conduct of, the negotiations include: policy advice on the negotiations; technical advice and information on negotiations on particular products or services both domestic and foreign; and advice on other factors which are relevant to positions of the United States in trade negotiations. The Committee anticipates that the advisory committees will be particularly helpful in identifying opportunities for expanded U.S. exports of both goods and services. However, their advice on the balance of market access being sought in the sectors in agriculture and manufacturing also should serve as a guide to our negotiators.

*Reports by Sector and General Advisory Committees.*—The Committee amended the House bill to require that the advisory bodies established under Section 135 issue appropriate reports at the conclusion of each specific agreement and following the conclusion of the overall negotiations.

Under new section 135(e), the Advisory Committee for Trade Negotiations, each general policy advisory committee, and each sector advisory committee established under subsection (c), if the sector which such committee represents is affected, would meet at the conclusion of negotiations for each trade agreement to provide to the President, to Congress, and to the Special Representative for Trade Negotiations a report on such agreement. The report of the Advisory Committee for Trade Negotiations and each appropriate policy advisory committee should include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States. The report of the appropriate sector committee should include an advisory opinion as to whether the agreement provides for equity and reciprocity within the broadly defined sector.

The Special Representative for Trade Negotiations is, of course, not bound by the advice of any particular advisory group. The Committee does consider, however, that advisory committees are entitled to be informed at an appropriate time when their advice and recommendations have not been accepted. Provision is also made in section 135(i) for inclusion in the President's report on the results of the negotiations, a report on the consultations with these committees, the issues involved in such consultations, and the reasons for not accepting their advice and recommendations. The Committee intends that the President's report indicate the extent to which the advice of the advisory committees was or was not accepted.

The applicability of the Federal Advisory Committee Act (Public Law 92-463) to the advisory committees requires special consideration. If the advisory committees are to play an effective role in the negotiations they should be privy to our negotiating objectives, strategy, and tactics. These are not subjects which can be discussed in public meetings, which may include representatives from other governments and the press. For that reason, section 135(f) of the Committee bill stipulates that whenever, and to the extent it is determined by the President or his designee that such meetings will concern matters which should they be disclosed would seriously compromise the Government's negotiating objectives or bargaining positions, the meetings of the product advisory committees may be exempted from the requirements of subsections (a) and (b) of section 10 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents). It is anticipated that, as the advisory committees begin discussion of U.S. negotiating positions, one determination could be issued for all future meetings on that subject.

*Trade Secrets and Confidential Information.*—The Committee provided in section 135(g)(1)(A) of the bill that information in the nature of trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private sector to officers or employees of the United States in connection with trade negotiations should not be disclosed to any person other than the following: officers and employees of the United States designated by the Special Representative for Trade Negotiations; Members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, who are accredited as official advisors under Section 161 of the bill or who are designated by the Chairman of either such Committee; and members of the staff of either such Committee designated by the respective Chairman in connection with negotiations of a trade agreement referred to in Sections 101 and 102. These procedures should insure maximum participation by the private sector in these negotiations.

Section 135(g)(1)(B) of the Committee bill would provide that information, other than that described above, and advice submitted in confidence by the private sector to officers or employees of the United States or to any of the advisory committees in connection with trade negotiations, should not be disclosed to any person other than the individuals described in Section 135(g)(1)(A) (described above) and the appropriate advisory committees established under this section. The Committee is aware that this subparagraph B would establish a limited statutory exemption to the Freedom of Information Act, as amended. It is the view of the Committee, however, that this exception is necessary due to the nature of the information involved and the adverse impact which such information could have on the ability of the United States effectively to carry on the multilateral trade negotiations. It should also be noted that this subparagraph would only be in effect for a limited period of time, since the sector advisory committees will cease to have any functions following the conclusion of the trade negotiations under Chapter 1 of Title I.

Section 135 (g)(2) of the Committee bill would provide procedures for the dissemination of information from officers or employees of the

United States to the advisory committees established under this section. Under Paragraph 2, the information submitted by such U.S. officials or employees would be disclosed to an advisory committee only in accordance with rules issued by the Special Representative for Trade Negotiations, and the Secretary of Commerce, Labor, or Agriculture, as appropriate, after consultation with the general and sector advisory committees established under Section 135(c) of the bill. While the nature of these rules would be to limit the dissemination of such information, the bill provides that the rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by proposed trade agreements.

The Committee fully agrees with the House that in this negotiation the private sector of our economy must be given a much larger role in providing information to our negotiators and assessing the merits of an agreement than has ever been provided in the past. If the Congress is to vote on trade agreements affecting virtually every segment of the American society, those affected most by such agreements should be able to consult closely with and provide vital information to the negotiators and in turn should be consulted on a regular basis by the negotiators. The alternative is to risk the future of the trade agreements program.

In addition, the committee bill contains a provision intended to assure private organizations or groups, including those whose interests may not be fully represented by any of the formally constituted advisory committees, the opportunity to submit pertinent information and recommendations on an informal basis to U.S. negotiators. The Committee amended section 135(j) (section 135(i) of the House bill) to provide for the submission of informal information on a confidential basis, if submitted pursuant to the provisions of subsection (g) of this section.

Finally, it is made clear that this section should not be construed to authorize or permit any individual to participate directly in any trade negotiation. In trade negotiations conducted under the auspices of the General Agreement on Tariffs and Trade, the direct participation of persons other than Government representatives is generally not permitted.

## CHAPTER 4. OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

### (Section 141)

The Committee bill would establish, within the Executive Office of the President, the Office of the Special Representative for Trade Negotiations. This office would be headed by the Special Representative for Trade Negotiations, who would be appointed by the President by and with the consent of the Senate.

As an exercise of the rule-making power of the Senate, any nomination of an individual to be Special Representative for Trade Negotiations submitted to the Senate for confirmation would be referred to the Committee on Finance. The Committee on Finance has primary jurisdiction in the Senate over trade policy and the trade agreements program. It is proper that the Committee which has that responsibility and which has created the Office of the Special Representative for Trade Negotiations should have jurisdiction over the nomination of persons to that Office. The two Deputy Special Representatives for Trade Negotiations who also are appointed by the President by and with the consent of the Senate also would have their nominations referred to the Committee on Finance.

Under the Committee bill, the functions of the Special Trade Representative would be defined. He would:

- (A) be the chief representative of the United States for each trade negotiation under this title or section 301;

- (B) be responsible and report directly to the President and to Congress for the administration of trade agreements programs under this Act; the Trade Expansion Act of 1962 and section 350 of the 1930 Tariff Act;

- (C) advise the President and Congress with respect to non-tariff barriers to international trade, international commodity agreements, and other matters which are related to the trade agreements program;

- (D) be responsible for making reports to Congress with respect to the matter set forth in subparagraphs (A) and (B);

- (E) be chairman of the interagency trade organization established pursuant to section 242(a) of the Trade Expansion Act of 1962; and

- (F) be responsible for such other functions as the President may direct.

Each Deputy Special Representative for Trade Negotiations would have as his principal function the conduct of trade negotiations under the bill and would have such other functions as the Special Representative for Trade Negotiations may direct.

In addition to the procedural provisions in the House bill, the Committee bill contains a new provision, section 135(f), which authorizes to be appropriated to the Office of the Special Representative for Trade Negotiations such amounts as may be necessary for the purpose of carrying out its functions under the bill for fiscal year 1976 and each fiscal year thereafter any part of which is within the 5-year period beginning on the date of enactment of this Act. Having established a new Office of the Special Representative for Trade Negotiations and defined its duties and provided the necessary authorization for appropriations, the Committee bill would abolish the old Office of the Special Representative for Trade Negotiations established under Executive Order 11075 on January 15, 1963 and transfer those assets, liability, contracts, and property, to the new Office created under this Act.

## CHAPTER 5. CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

### BILLS IMPLEMENTING TRADE AGREEMENTS ON NONTARIFF BARRIERS AND RESOLUTIONS APPROVING COMMERCIAL AGREEMENTS WITH COMMUNIST COUNTRIES

(Section 151)

The Committee believes that all nontariff barrier agreements negotiated pursuant to Title I and all commercial agreements negotiated under Title IV (except for the U.S.-U.S.S.R. agreement) should be subject to the approval of both Houses of Congress before they take effect with respect to the United States. Accordingly, the bill would require that all nontariff barrier agreements under Section 102 and agreements with communist countries pursuant to section 405 be approved by a majority vote of both Houses of Congress, rather than by the legislative veto procedure recommended in the House bill, before such agreement(s) could enter into force for the United States, both internationally and with respect to domestic law. Virtually all nontariff barriers in the United States are matters of law. If the Congress were to delegate to the President the power to change domestic law, subject only to a Congressional veto, it would not only be a reversal of the constitutional roles of the legislative and executive branches, but also an abrogation of legislative responsibilities.

The Committee recognizes, however, that such agreements negotiated by the Executive should be given an up-or-down vote by the Congress. Our negotiators cannot be expected to accomplish the negotiating goals of Title I if there are no reasonable assurances that the negotiated agreements would be voted up-or-down on their merits. Our trading partners have expressed an unwillingness to negotiate without some assurances that the Congress will consider the agreements within a definite time-frame. The Committee is quite aware, however, that some of these countries do not have advance authority themselves to change their own domestic laws and regulations without parliamentary approval. In establishing the procedures described below, the Committee hopes that other major negotiating partners will also establish procedures to deal expeditiously with nontariff barrier agreements affecting domestic laws and regulations.

Under the Committee bill there is virtual assurance that a nontariff barrier agreement or bilateral commercial agreement with a communist nation which enters into such agreement after the passage of this bill would be voted on, on its merits, within 60 days during which each House considering the implementing legislation is in session (or, in the case of a revenue bill, which must originate in the House, within 90 days).

There would be one exception to the affirmative approval procedures for agreements with communist countries. Section 407 provides that any agreement entered into before passage of the bill and any proclamation implementing such an agreement, would take effect unless it is

the subject of a disapproval resolution adopted by either House of Congress by the majority of those voting. This exception has been made to allow implementation of the U.S.-Soviet agreement concluded in 1972. All other agreements concluded pursuant to the authority of Section 405 (and the extension of nondiscriminatory treatment pursuant to Section 404) would be subject to affirmative approval under the procedures of this section.

*Section 151(a). Rules of the House of Representatives and Senate.*—The procedures for approval of bills implementing nontariff barriers or resolutions approving trade agreements with Communist countries would be an exercise of the rule-making power of each House; they would supersede the rules of each House only to the extent they are inconsistent with such rules. Furthermore, these procedures would be subject to change in either House, at any time, in the same manner and to the same extent as other rules of each House.

*Section 151(b). Definitions.*—A bill implementing a nontariff barrier agreement would contain a provision approving the trade agreement or trade agreements to be implemented, a provision approving a statement of administrative action (including any rules or regulations) necessary to implement the agreement or agreements (if there is to be any such administrative action), and, if changes in existing law or if new statutory law would be required, provisions either repealing or amending existing law, or providing new statutory authority.

The implementing bill would, therefore, include draft provisions of legislation necessary to implement the agreement and, if significant administrative action is contemplated, a general statement as to the nature of such action. The Committee recognizes that at the time an implementing bill is proposed, it may be impossible to submit for Congressional review the precise administrative rules, regulations or executive orders to be issued following such an agreement. Moreover, the Committee does not believe it is advisable to subject detailed rules to Congressional approval and thereby raise the problem of subsequent minor changes in such rules requiring further Congressional approval. However, within these guidelines, the Committee believes that the statement of administrative action should be as complete as possible.

This subsection would also define “implementing bill”, “implementing revenue bill”, and “approval resolution”. The language of the Committee bill speaks for itself on the definitions.

Resolutions approving trade agreements with Communist countries would be in the following form:

*“That the Congress approves the entering into force of the bilateral commercial agreement with —————*

*(Name of country)*

*transmitted by the President to the Congress on ———.”*

*(Date)*

*Section 151(c). Introduction and Referral.*—An implementing bill, or an approval resolution, would be transmitted by the President (after consultations, in the case of an implementing bill, with the Committee on Ways and Means of the House and Committee on Finance as to how such legislation will be “packaged”) to both the House of Representatives and the Senate. On the day of such transmission, or, in the

case of an approval resolution, on the day on which a bilateral commercial agreement entered into under Section 405 is transmitted to the House and the Senate, the bill or resolution would be introduced (by request) by the majority leader of the House for himself, or his designee, and by the minority leader of the House or his designee, and in the Senate, by the majority leader of the Senate for himself, or his designee and the minority leader of the Senate or his designee. The implementing bill would then be referred to the House Ways and Means Committee, the Senate Finance Committee, and to other committees of either House with jurisdiction over legislation involving the subject matter of the agreement. The approval resolution would be referred to the House Committee on Ways and Means and the Senate Committee on Finance.

*Section 151(d). Amendments Prohibited.*—In order to assure as nearly as possible, consistent with the legislative prerogative and Congressional rulemaking procedures, that implementing bills or approval resolutions would be voted on as negotiated, section 151(d) provides that no amendments to implementing bills or approval resolutions are in order. This rule would not be subject to suspension in either House by unanimous consent.

*Section 151(e). Period for Committee and Floor Consideration.*—After referral to committee, an implementing bill or resolution of approval would be reported within 45 days (during which that House is in session) after introduction. If it is not reported within such time, the committee or committees considering the bill or resolution would be automatically discharged from further consideration and the bill or resolution would be placed on the calendar of the appropriate House. A final vote would be taken by each House within 15 days in which that House is in session after the bill or resolution is reported from committee or the committee or committees are discharged from further consideration of the bill or resolution.

An exception to the general time limit is made for implementing bills which, because they are revenue bills, must initiate in the House of Representatives. In such cases, the appropriate Senate committees would have an extra 15 "legislative" days for consideration of the bill before it must be reported. Under section 151, a vote on final passage would be taken in the Senate on or before the close of the 15th day after such bill is reported by the committee(s) of the Senate to which it was referred, or after such committees have been discharged from further consideration of the bill.

*Section 151 (f) and (g). Floor Consideration in the House and Senate.*—These sections would limit the time for floor debate in both the House and the Senate and the motions which could be made in connection with an implementing bill or approval resolution. Because the rules of each House differ, the procedures governing floor debate set forth in these sections differ somewhat.

In both the House and the Senate, motions to consider implementing bills and approval resolutions would be highly privileged ("privileged" in the Senate) and not debatable. Amendments to such motions would not be in order nor would a motion to reconsider such motions.

In the House: (a) Debate would be limited to 20 hours, evenly divided between those favoring and those opposing the bill or resolution; motions to recommit or reconsider a vote by which a bill or resolution is agreed or disagreed would not be in order.



(b) Motions to postpone consideration and to proceed to other business would be decided without debate.

In the Senate: (a) Debate on an implementing bill or approval resolution and all debatable motions in connection with either, would be limited overall to twenty hours; the time would be equally divided between the majority and minority leaders (or their designees).

(b) Debate on any debatable motion would be limited to one hour.

(c) Motions to recommit an implementing bill would not be in order and motions to limit debate would not be debatable.

## RESOLUTIONS DISAPPROVING CERTAIN ACTIONS

### (Section 152)

*Two-House Veto:* Just as the Committee believes it is important to assure a vote on the merits of any bill implementing a nontariff barrier agreement or a resolution of approval with respect to a commercial agreement entered into under Title IV of this bill, so the Committee believes it is important to assure that procedures are developed to guarantee effective Congressional oversight of matters in other areas of trade policy. Accordingly, the Committee has provided in a number of instances for Congressional disapproval of certain Executive actions. For example, where the President imposes import relief actions under Title II and market disruption actions under Title IV different from the action recommended by the International Trade Commission, the Congress may disapprove of the relief selected by the President and direct him, instead, to impose the relief recommended by the Commission. In connection with the authority under section 301 of the bill to take retaliatory action against unfair foreign trade practices, the Congress may restrict the application of retaliatory action to the country or countries imposing the unjustifiable or unreasonable trade practices in cases where the President has chosen to retaliate on an MFN basis. In each of these cases, a Congressional override would be provided for by concurrent resolution. The Committee feels that since such actions would result in the imposition of affirmative action on a basis other than that proposed by the President (i.e., the imposition of relief recommended by the Tariff Commission or retaliatory action on a selective basis), it is appropriate to require that a disapproval resolution be adopted by an affirmative vote by the majority of members present and voting in both Houses of Congress.

*One-House Veto:* However, Congressional actions disapproving the suspension of the imposition of countervailing duties or the entering into force (with respect to the Soviet-American agreement of 1972) or continuing of nondiscriminatory treatment with respect to the products of a Communist country would not require additional affirmative action upon the President (or the Secretary of the Treasury). Disapproval of the Secretary of the Treasury's suspension of the imposition of countervailing duties would result in the imposition of those countervailing duty orders already issued by the Secretary; and disapproval of the granting or continuance of nondiscriminatory treatment would require no action on the part of the Executive. In either case, therefore, the Committee believes it appropriate to provide for disapproval by vote of either House.

*Procedural Rules:* Because the issues involved will be narrower than those involved in the approval of nontariff barrier agreements under the procedures of section 151, the Committee believes it appropriate to

afford the committees of Congress (the House Committee on Ways and Means and the Senate Committee on Finance) to which a disapproval resolution has been referred 30 days to report on such resolution. Upon failure to report on a resolution within such time, the committee or committees considering it could be discharged from further consideration upon adoption of a motion to discharge. Such motion could be made only by an individual favoring the resolution, would be "highly privileged" in the House, and "privileged" in the Senate; and debate thereon would be limited to one hour. Amendments on any such motion to discharge would not be in order, and it would not be in order to reconsider the vote by which any such motion is agreed or disagreed to. Floor consideration of resolutions of disapproval would be substantially similar to those provided for implementing bills and approval resolutions under section 151. The time limits for final vote on resolutions of disapproval, in each case, are set out in the particular substantive provisions of the bill to which the veto procedures apply.

Special provision has been made for concurrent resolutions to allow simultaneous consideration of the resolutions by each House, but providing that the resolution first passed by either House would be the one on which the other House will vote with respect to final passage.

## SPECIAL RULES RELATING TO CONGRESSIONAL PROCEDURES

### (Section 153)

Section 153 of the bill would govern the mechanics of transmitting documents of approval or disapproval to the Congress, and provide that days on which either House is not in session because of an adjournment of more than three days to a day certain or an adjournment *sine die*, and any Saturday or Sunday when either House is not in session, would be excluded in computing the 90 day period for resolutions of disapproval.

The Committee believes that the combination of approval and disapproval procedures provided in Chapter 5 of Title I would provide sufficient assurances that the Congress will consider agreements negotiated by the Executive on their merits, and yet preserve intact the essential Constitutional responsibilities of the Congress to regulate commerce with foreign nations. There is no question, however, that the soundness of this judgment depends on how well the President's negotiators carry out the purposes of this legislation to achieve equity and fairness for United States commerce in international trade, and how closely the negotiators work with the Congress throughout these negotiations. They must not only keep a select few members informed; they must work to gain the confidence and respect of all members, as well as keeping members fully informed.



## CHAPTER 6. CONGRESSIONAL LIAISON AND REPORTS

### CONGRESSIONAL DELEGATES TO NEGOTIATIONS

#### (Section 161)

In order to provide for careful and continuous Congressional oversight of these negotiations (and thus to encourage a successful series of negotiated agreements) the Committee bill would provide for Congressional delegates, accredited as official advisors, to these negotiations.

At the beginning of each regular session of Congress, the Speaker of the House of Representatives, upon the recommendation of the Chairman of the Committee on Ways and Means, would select five members of that committee (not more than three of whom are members of the same political party) and the President pro tempore of the Senate, upon the recommendation of the Committee on Finance, would select five members of this committee (not more than three of whom are members of the same political party). The members would be fully accredited as official advisors to the United States delegation and would have full access to such information as they may require. They may attend such conferences, meetings and negotiating sessions as is appropriate.

The Special Representative for Trade Negotiations would be required to keep each official advisor currently informed on how the U.S. negotiating objectives are being met, the progress of the negotiations, and the nature of any changes in domestic law or the administration thereof which may be recommended to Congress to carry out any trade agreement.

Under the bill, other members of the House Committee on Ways and Means and the Senate Committee on Finance, designated by the Chairman of the respective committees, would also have access to the information provided to the official advisors designated under section 161 (a).

Because members of the Committee may be extremely busy with legislative tasks, the Committee deemed it advisable to permit staff members of the Committee on Ways and Means and the Committee on Finance who are designated by the Chairman of each Committee to have full access to the information provided to the official Congressional advisors. Staff personnel would be kept fully informed on the progress of the negotiations and shall have access to such information and to such meetings as would be appropriate in the light of the responsibilities of their Committees over the trade agreements program.

## TRANSMISSION OF AGREEMENTS TO CONGRESS

## (Section 162)

Under section 162 of the bill, the President would be required to transmit all trade agreements to the Congress together with a statement, in light of the advice of the Commission and other relevant considerations, of his reasons for entering into the agreement. These reports must give a factual description of the benefits of the agreements to the U.S. economy, with specific information regarding the tariff and nontariff barriers which may remain in each product sector of manufacturing and within the agriculture sector, among industrial countries. A description of how the negotiating objectives were met should be included in these reports.

## ANNUAL REPORTS

## (Section 163)

The annual reports required by section 163 would include information on import relief and adjustment assistance; new negotiations; changes in tariff and nontariff barriers; reciprocal concessions obtained; changes in trade agreements (including the incorporation therein of actions taken for import relief and compensation provided therefor); extension or withdrawal of nondiscriminatory treatment by the United States with respect to the products of a foreign country; extension, modification, withdrawal, suspension, or limitation of preferential treatment to exports of developing countries; the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports and the removal of foreign practices which discriminate against United States service industries (including transportation and tourism) and investment; and the measures being taken to seek the removal of other significant foreign import restrictions; and other information relating to the trade agreements program and to the agreements entered into thereunder. The Committee added a requirement to section 163 of the House bill that the annual report would also include information regarding the number of applications filed for adjustment assistance for workers, firms, and communities, the number of such applications which were approved, and the extent to which adjustment assistance has been provided under such approved applications.

The Commission would also submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

## CHAPTER 7. UNITED STATES INTERNATIONAL TRADE COMMISSION

(Sections 171-175)

The Tariff Commission, which was established in 1916, is a permanent, independent, nonpartisan agency whose principal function is to provide technical and fact-finding assistance to the Congress and the President upon the basis of which trade policies may be determined. The Committee strongly believes in the need to prevent the Commission from being transformed into a partisan body or an agency dominated by the Executive Branch. For this reason, many of the amendments offered in this bill with regard to the Commission are directed at strengthening its independence.

In addition, the Committee finds that it is imperative that measures be taken at once to strengthen the Commission not only in the interest of assuring adequate staff and facilities to handle its current workload which is increasing considerably, but also to prevent its inevitably being overwhelmed by the additional responsibilities imposed upon it by this bill. From testimony received in the public hearings, from discussions in executive session, as well as from other evidence, it is manifestly clear to the Committee that, in making policy determinations respecting trade, the Congress and the Executive are far too often severely handicapped by the lack of the requisite relevant background information. The Committee bill is designed to overcome this lack by strengthening the Commission.

Section 171 of the bill would rename the United States Tariff Commission as the United States International Trade Commission. When originally created, the Commission was granted broad authority to investigate the international trade of the United States. However, for a number of years the primary emphasis of the Commission's operations was to provide expert advice and information on tariff matters, since tariffs were the primary tools of international trade policy at the time. Over the years the functions of the Commission have been enlarged, and they now involve many areas not strictly associated with tariffs but with rather varied aspects of international trade and economics. Additionally, the relative importance of tariffs has declined and other barriers to international trade have assumed greater importance.

Section 172(a) of the bill would amend present subsections 330 (a) and (b) of the Tariff Act of 1930. Subsection 330(a) would be amended to provide for a Commission of seven members rather than the present six member Commission. This amendment is directed at helping secure consideration of the important matters which come before the Commission by a number of Commissioners which is not so small as to unduly limit the expertise and consideration brought to bear on the subject; in the past, sickness, vacancies, and other problems have sometimes resulted in two or more Commissioners not participating in the business of the Commission. It is also hoped that this amendment will reduce the number of tie votes which have rather frequently

occurred in the recent past when the Commission has voted on matters before it. In providing for seven Commissioners, the amendment would also provide that not more than four Commissioners may be members of the same political party, while present law provides that not more than three Commissioners may be of the same political party. This change was necessitated by the expansion of the Commission to seven members and the lack of efficacy in attempting to provide that there in effect be one member of the Commission not of the two major parties, that is, one who was truly independent. However, it is the intent of the Committee that this necessary and practical amendment not be read as in any way encouraging or condoning the politicization of the Commission. The Committee emphasizes that the Commission, as indeed the staff also, must be selected on the basis of merit.

Subsection 330(a) would be further amended to provide that a person who has served on the Commission for a period of more than seven years, not counting service before the enactment of this bill, will not be eligible for reappointment as Commissioner. Under present law, Commissioners are eligible for reappointment no matter what their length of service. When considered in conjunction with subsection 330(b) as amended by the Committee, which provides for 14-year terms for members of the Commission, the effect of this amendment would be to strengthen the independence of the Commission by removing the possibility of reappointment in the normal situation.

Section 330(b), as amended by the Committee, would provide that the terms of office of the Commissioners holding office on the date of enactment of this bill shall be extended for varying periods (from 1 year to 6 years) so that their terms expire two years apart from each other. This was necessary to provide for the orderly expiration of terms and orderly appointment of new members of the Commission for the 14 year terms provided by the amended subsection; at present, Commissioners serve six-year terms. Under the amended subsection, a Commissioner appointed after the date of enactment of this bill would serve a term of 14 years from the date of expiration of the term of his predecessor, except that the first Commissioner appointed by reason of the increase in the number of Commissioners to seven under amended subsection 330(a) would serve only until 1988. Any Commissioner appointed to fill a vacancy would serve out the remainder of the term of his predecessor. Thus, a Commissioner appointed to fill a vacancy when there were six years left in the term of his predecessor would serve only those 6 years under that appointment. However, he would be eligible for reappointment, since he had not served more than seven years after the enactment of this bill.

Section 172(b) of the bill would amend subsection 330(c) of the Tariff Act of 1930 by providing for the automatic rotation among Commission members of the chairmanship and vice chairmanship of the Commission after June 16, 1976. Under present subsection 330(c), the chairman and vice chairman are appointed by the President for one-year terms. Under the amended section, the Commissioner whose term is first to expire would serve as chairman during the last 2 years of his term, and the Commissioner whose term is second to expire would serve as vice chairman during the same two-year period. A person appointed to fill a vacancy during the last two years of a term would serve out that term as chairman, and a person appointed to fill a vacancy during the last 3rd or 4th year of a term would serve the

remainder of the last 3rd and 4th year of his predecessor as vice chairman. This amendment is intended to strengthen the independence of the Commission by removing the power to appoint the chairman and vice chairman of the Commission from the President. Also, it would provide, in the normal course of events, that the chairman and vice chairman of the Commission are the two most senior in service among Commission members. It is hoped that this may provide an incentive to Commissioners to serve their entire terms and avoid vacancies, as well as provide that the most experienced members of the Commission serve as chairman and vice chairman, which is generally desirable.

Section 172(c) of the bill provides that the position of the chairman of the Commission would be at Level III of the Executive Schedule, and other members of the Commission at Level IV of the Executive Schedule; under present law, the Levels are IV and V, respectively. It is intended that this amendment provide increased compensation and prestige for the positions and aid in attracting able and dedicated individuals to fill the positions.

Section 173 of the bill would provide that the annual report to Congress on the operations of the Commission required by section 332(g) of the Tariff Act of 1930 shall show the vote of each Commissioner on each vote taken by the Commission during the year, and shall indicate when a Commissioner did not vote and the reasons for not voting. It is not the intent of this Committee that votes on internal Commission matters (work schedules, personnel matters, etc.) would be covered; but any vote which results in public notice of an action, or any vote on an investigation of the Commission or which results in a report being issued, would be included in the report. It is hoped that this amendment will encourage participation by all Commissioners in the important business of the Commission.

Section 174 of the bill would provide that the Commission shall be represented in all judicial proceedings by attorneys who are employees of the Commission or, if the Commission desires and requests it, by the Attorney General of the United States. In order to be able to effectively carry out its mandate of providing advice and information to the President and the Congress, the Commission must be able to obtain information it determines to be relevant and necessary to its decision-making process, and must be able to determine itself when it will pursue a particular investigation. Under present law, the Commission is authorized to issue subpoenas for the purpose of requiring that personnel and/or documented information be made available to the Commission. However, in order to enforce effectively such subpoenas, the Commission must presently rely upon the Department of Justice in the Executive Branch. In certain cases, enforcement of subpoenas of the Commission and representation of the Commission in other matters by the Department of Justice has been characterized by a difference of opinion between the Department and the Commission as to what should be the appropriate policy and action to be taken. If the Commission is not able to enforce its subpoena power and defend its actions on the terms which it deems to be necessary, its ability to perform its statutory functions will be greatly impaired. The amendment provided by this section is intended to permit the Commission to enforce its subpoena power and defend its actions on the terms it deems necessary, and thus further strengthen its independence.



The Committee strongly believes that the only way to preserve the strict independence of the Commission from unwarranted interference or influence by the Executive Branch is to place its budget directly under the control of the Congress. Consequently, section 175 of the bill would more specifically identify the Commission as an agency independent from the Executive departments, would provide that the budget of the Commission shall not be subject to revision by the President under the Budget and Accounting Act, 1921, but rather shall be included by the President in the Budget without revision. Further, any necessary apportionment or reappportionment of appropriations required by section 3679 of the Revised Statutes (31 U.S.C. 665) would not be subject to the control of the Director of the Bureau of the Budget, but rather by the Commission officer having administrative control of such appropriation.

In addition, section 175(b) of the Committee bill would require that, for any fiscal year beginning Oct. 1, 1976 or thereafter, the authorization of appropriations to the Commission would have to be provided by law. The Committee bill would also amend the Senate rules to permit three members of the Committee on Finance to sit with the Appropriations Committee during such time as it considers the Commission appropriations.

## **Title II.—Relief From Injury Caused by Import Competition**

### **CHAPTER 1. IMPORT RELIEF**

(Sections 201–203)

For many years, the Congress has required that an “escape clause” be included in each trade agreement. The rationale for the “escape clause” has been, and remains, that as barriers to international trade are lowered, some industries and workers inevitably face serious injury, dislocation and perhaps economic extinction. The “escape clause” is aimed at providing temporary relief for an industry suffering from serious injury, or the threat thereof, so that the industry will have sufficient time to adjust to the freer international competition.

By reason of the Congressional requirement, the trade agreements to which the United States is a party contain an escape clause or equivalent provision. Typical and of most general effect is Article XIX.1.(a) of the General Agreement on Tariffs and Trade.\*

From 1951 through 1962 the escape clause worked reasonably well. The criteria were fair and equitable, and relief was occasionally granted. However, in 1962 the Administration proposed and the Congress adopted rigid and stringent tests of injury and causal relationships between tariff concessions, increased imports and serious injury.

As a result, the provisions of the Trade Expansion Act of 1962 for invoking the escape clause (like the adjustment assistance provisions also adopted in that Act, which contained similar injury tests) have proven to be an inadequate mechanism for providing relief to domestic industries injured by import competition. One result of this inadequacy has been a number of special “voluntary” agreements for industries deemed by the Congress or the Executive to be suffering from excessive imports. The Committee believes it is better to provide a fair and reasonable test for any industry which is being injured by imports—a determination made by an independent factfinding body, such as the International Trade Commission—than to rely on ad hoc agreements for a few select industries!

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\*“If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.”

## INVESTIGATION BY INTERNATIONAL TRADE COMMISSION

## (Section 201)

The Committee agrees with the House that there is a need to relax the criteria for determining injury to a domestic industry. Under section 201(a)(1) of the bill, a petition for eligibility for import relief may be filed with the Commission by an entity which is representative of an industry, including a trade association, firm, union, or group of workers. The petition must include a statement describing the specific purposes for which import relief is sought (which may include the facilitation of the transfer of resources to alternative uses and other means to adjust to new competitive conditions). The Commission would transmit a copy of any petition to the Special Representative for Trade Negotiations and to the government agencies directly concerned.

An investigation by the Commission could be initiated at the request of any petitioner, at the request of the President or the Special Representative for Trade Negotiations, upon resolution of either the Committee on Ways and Means or the Senate Finance Committee, or by the Commission's own motion. The Commission's investigation would determine whether an article is being imported in such increased quantities as to be a *substantial cause* of serious injury, or the *threat thereof*, to the domestic industry producing an article like or directly competitive with the imported article. The Commission must hold public hearings during the course of its proceedings and afford all interested parties a reasonable opportunity to present their views.

The requirement of the Trade Expansion Act that increased imports result *in major part* from trade concessions has been very difficult to satisfy in the past and has become a major barrier to import relief. The criteria for import relief under the bill would relax the present import relief criteria by: (1) removing the "causal link" requirement that imports result in major part from trade agreement concessions and (2) requiring that increased imports need only be "a substantial cause," rather than "the major cause," of actual or threatened injury. The increase in imports referred to would generally be such increases as have occurred since the effectiveness of the most recent trade agreement concessions proclaimed by the President, i.e., as of now, the effectiveness of the Kennedy Round concessions beginning in 1968.

Modification of the requirement that increased imports be the major cause of actual or threatened injury is necessary because "the major cause" has been interpreted as being a cause greater than all other causes combined (although there is some indication that in recent years the Commission has moved away from this standard). This has proved in many cases to be an unreasonably difficult standard to meet. Substantial cause is defined in the bill to mean a cause which is important and not less than any other cause. This requires that a dual test be met—increased imports must constitute an important cause and be no less important than any other single cause.

The Committee recognizes that "weighing" causes in a dynamic economy is not always possible. It is not intended that a mathematical test be applied by the Commission. The Commissioners will have to assure themselves that imports represent a substantial cause or threat of injury, and not just one of a multitude of equal causes or

threats of injury. It is not intended that the escape clause criteria go from one extreme of excessive rigidity to complete laxity. An industry must be seriously injured or threatened by an absolute increase in imports, and the imports must be deemed to be a substantial cause of the injury before an affirmative determination should be made.

The Committee believes strongly that Commission determinations under this and other statutes ought to be clear, well documented, and, as nearly as possible, decisive. The Committee is disturbed by the frequency of tie votes on cases before the Commission particularly when not all Commissioners have voted. In all cases the Commission should seek to reach a majority vote on the matter before it. The effect of a "no decision" tie vote in an escape clause case is to give the President complete discretion without much guidance about the case.

The Committee has endorsed the provision of the House bill identifying the factors to be taken into account by the Commission in determining serious injury, threat of serious injury, and substantial cause. These factors are not intended to be exclusive. It is important to note that the Commission is directed to take into account all economic factors it considers relevant. In making its determination with respect to serious injury, the Commission should take into account the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant employment or underemployment in the industry.

With respect to threat of serious injury, the Commission should consider a decline in sales, a higher and growing inventory, and downward trend in production, profits, wages, or employment (or increasing underemployment) in the affected domestic industry. The existence of any of these factors such as the growth in inventory would not in itself be relevant to the threat of injury from imports if it resulted from conditions unrelated to imports. Such conditions could arise from a variety of other causes, such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management. It is the intention of the Committee that the threat of serious injury exists when serious injury, although not yet existing, is clearly imminent if imports trends continued unabated.

The Committee has made one change in the House bill provision which contains factors to be considered by the Commission in determining whether imports are a substantial cause of injury. The House bill would require the Commission to take into account, among other things, whether there is either an absolute or a relative increase in imports; section 201(b)(2)(c) of the Committee bill would require the Commission to consider only whether there is an *absolute* increase in imports, as well as a decline in the proportion of the domestic market supplied by domestic producers. The Committee feels that unless imports are increasing absolutely, they cannot be a substantial cause of serious injury.

The term "like or directly competitive" used in the bill to describe the products of domestic producers that may be adversely affected by imports was used in the same context in section 7 of the 1951 Extension Act and in section 301 of the Trade Expansion Act. The term was derived from the escape-clause provisions in trade agreements, such as article XIX of the GATT. The words "like" and "directly competitive," as used previously and in this bill, are not to be regarded

as synonymous or explanatory of each other, but rather to distinguish between "like" articles and articles which, although not "like", are nevertheless "directly competitive." In such context, "like" articles are those which are substantially identical in inherent or intrinsic characteristics (i.e., materials from which made, appearance, quality, texture, etc.), and "directly competitive" articles are those which, although not substantially identical in their inherent or intrinsic characteristics, are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor.

The Committee notes that the term "like or directly competitive" as used in sections 201 and 405(4) of the Trade Expansion Act of 1962 has been the subject of recent court action. The courts, in upholding the Commission, concluded that imported finished articles are not like or directly competitive with domestic component parts thereof. *United Shoe Workers of America, et al. v. Catherine Bedell, et al.*, Civil Action No. 2197-71 (D.D.C., filed May 9, 1972), No. 72-1554 (D.C. Cir., filed Oct. 23, 1974).

The term "industry" includes entities engaged in agricultural activities. In determining the domestic industry producing an article like or directly competitive with an imported article, the Commission may, in the case of a domestic producer which imports, treat as part of such domestic industry only its domestic production. In the case of a domestic producer which produces more than one article, the Commission could choose to treat as part of such domestic industry only that portion or subdivision of the producer which produces the like or directly competitive article. The Committee feels that this is the preferred way to define an industry in a multiproduct or conglomerate situation. Otherwise, the relative affluence of a large multiproduct or multinational corporation may indicate an industry is healthy even though the smaller producers may be seriously injured by imports.

Similarly, where a corporate entity has several independent operating divisions, and only some of these produce the domestic article in question, the divisions in which the domestic article is not produced may be excluded from the determination of what constitutes the "industry" for the purposes of the Commission investigation and finding.

To assist the President in determining the method and amount of relief to be provided under sections 202 and 203 and whether adjustment assistance should be substituted for import relief, the Commission would also investigate and report on efforts by firms in the industry to compete more effectively with imports.

The escape clause is not intended to protect industries which fail to help themselves become more competitive through reasonable research and investment efforts, steps to improve productivity and other measures that competitive industries must continually undertake.

Furthermore, the Commission would be required, whenever in the course of its investigation it has reason to believe that the increased imports are attributable in part to circumstances which come within the purview of the Antidumping Act, the countervailing duty statute (section 303 of the Tariff Act of 1930), the unfair import practices statute (section 337 of the Tariff Act of 1930), or other remedial provisions of law, to notify promptly the appropriate agency so that

such action may be taken as is otherwise authorized by such provisions of law. Action under one of those provisions when appropriate is to be preferred over action under this chapter. This provision is designed to assure that the United States will not needlessly invoke the escape-clause (article XIX of the GATT) and will not become involved in granting compensatory concessions or inviting retaliation in situations where the appropriate remedy may be action under one or more U.S. laws against unfair competition for which no compensation or retaliation is in order.

The bill would include the provisions of present law requiring the Commission to complete the investigation and report the findings to the President within a maximum of six months after the filing of the petition or request for an investigation.

This time frame for a determination has been law since the 1958 Trade Agreements Extension Act. If the determination is affirmative, the Commission would include a finding as to the duty, other import restriction it deems necessary to prevent or remedy the injury or encourage adjustment to increased import competition. However, the Committee amended the House bill to permit the Commission to recommend adjustment assistance, in lieu of import relief in circumstances in which the Commission determines that such assistance would be a more effective remedy to the serious injury than import relief. Again, the Committee feels strongly that the Commission ought to reach a clear, definitive majority view on the nature of the remedy that is most suitable to the injury found. The Commission must publish its report (except for confidential information) and publish a summary in the Federal Register.

The Committee has agreed to provisions of the House bill stipulating that the Commission would not investigate the same subject matter under a previous investigation unless one year has elapsed since the Commission reported to the President the results of the previous investigation, except in situations in which the Commission determines that good cause exists. The Committee believes that this exception is necessary for those instances in which an industry can produce, to the satisfaction of the Commission, sufficient new evidence to warrant reconsideration of the case. The rule that no new investigation may be begun until one year has elapsed since the report of the Commission does not apply to investigations initiated under the Trade Expansion Act which resulted in negative determinations. These cases may be the subject of a new investigation at any time following enactment of this bill. Given the relaxation in the injury criteria in the Committee bill as compared with existing law, the Committee believes that a number of petitioners who failed to obtain relief in the past—because, for example, increased imports were not caused in *major part* by tariff concessions, or that such imports were not *the major cause* of injury—could be found by the Commission to be experiencing injury from imports according to the new standards in the bill.

The bill would further provide that any investigation which is in progress upon its enactment would be continued in the same manner as if the investigation had been instituted originally under its provisions. The request for any such investigation would be treated as if it had been made on the date of enactment of this bill. In addition, any affirmative finding pursuant to the Trade Expansion Act of 1962 on which the President has not taken action on the date of enactment

of this bill would be treated as an affirmative finding and as having been received by the President on the date of the enactment of this Act.

## PRESIDENTIAL ACTIONS AFTER RECEIVING COMMISSION DETERMINATION (Section 202)

This section would require the President to implement import relief or, if the Commission finds that adjustment assistance offers a viable alternative to import relief, to direct that expeditious consideration be given petitions for adjustment assistance. That relief ought not to be denied for reasons that have nothing whatever to do with the merits of the case as determined under U.S. law. In particular, the Committee feels that no U.S. industry which has suffered serious injury should be cut off from relief for foreign policy reasons. In addition, section 202 would provide time limits for Presidential action, and would enumerate factors which the President must take into account in making his determination as to the form and amount of import relief to be provided in the event adjustment assistance is not to be provided in place of import relief.

With respect to import relief the President is, however, given the flexibility to select (within the alternatives afforded under section 203(a)) the type and level of import relief to be provided. If, however, the import relief selected by the President differs from that recommended by the Commission, the Congress may, by concurrent resolution adopted by a majority of the members of each House present and voting, disapprove such relief and direct the President to proclaim, within 30 days after the day on which such resolution was adopted, the relief recommended by the Commission. If, in the event of a tie vote among Commissioners (an eventuality the Committee hopes will not occur), the President may decide whether or not to provide relief, and if he decides to provide relief, what form it should take.

In determining the type and level of import relief to be granted, the President would examine the nature of the industry, the injury, and the Commission's recommendation(s) for remedial action. He would also consider information and advice from the Secretaries of Labor and Commerce with regard to adjustment assistance within the industry concerned and the effect such assistance is likely to have in facilitating adjustment to import competition; the effectiveness of import relief as a means to restore health to the industry or, if necessary, to promote needed adjustment, and the efforts to adjust to import competition being made or to be implemented by the industry concerned; other considerations relative to the position of the industry in the Nation's economy; the effect of relief on consumers; the effect of import relief on the U.S. international economic interests; the impact on U.S. industries and firms of any possible modification of duties which may result from payment of compensation to foreign countries; the geographic concentration of imported products marketed in the United States; the extent to which the U.S. market is the focal point for exports of the article because of restraints on exports or imports of the article with respect to third country markets; and the overall economic and social costs which would be incurred by taxpayers, communities, and workers if import relief were, or were not, provided.

With regard to the effect of relief on consumers, the Committee feels that the goals of the Employment Act of 1946 should be paramount. Unemployed persons are not happy consumers. The Executive should not confuse the effect on consumers with the effect on importers or foreign producers; they are not the same. If the choice is between (1) allowing an industry to collapse and thereby creating greater unemployment, larger Federal or state unemployment compensation payments, reduced tax revenues, and all the other costs to the economy associated with high unemployment, or (2) temporarily protecting that industry from excessive imports at some marginal costs to the consumer, then the Committee feels that the President should adopt the latter course and protect the industry and the jobs associated with that industry.

Under section 202 of the bill, the President would have 60 days following receipt of a report containing an affirmative Commission finding (or a report containing an equally divided Commission finding which the President may treat as an affirmative finding) to make a determination as to the type and level of import relief he will provide. Within such overall limits, the President could, within 15 days of the receipt of such a report, request supplemental information from the Commission, and, in such a case, the Commission would have an additional 30 days to submit the supplemental report. The President must then make a decision within 15 days after receiving the supplemental report. The time limits in this bill would shorten considerably the time for Presidential determination as to import relief under present law. The Committee notes that these provisions eliminate an anomaly in existing law which imposes no time limit on the President's decision respecting evenly divided decisions by the Commission.

It is the intent of the Committee, however, that the President act expeditiously in providing a remedy to the domestic industry and not utilize all the time permitted under this bill.

## IMPORT RELIEF

### (Section 203)

The Committee bill would require the President to provide import relief whenever the Commission determined that there is serious injury or, the threat thereof, to an industry in the United States unless the Commission recommends that the adjustment assistance offers a satisfactory alternative. The Committee bill deleted from the House bill the order of preference which would have been imposed upon the President in providing import relief. That order of preference would have been:

- (1) increases in, or imposition of duties;
- (2) tariff-rate quotas;
- (3) quantitative restrictions (quotas);
- (4) orderly marketing agreements.

The Committee felt that the order of preference did not make sense, because in any particular case of serious injury, the appropriate remedy might differ.

The Committee has, however, added to those measures which may be taken for relief purposes the extension of adjustment assistance to eligible workers, firms and communities. This would afford the President the flexibility to avoid the imposition of import relief restrictions,



in any case where the Commission finds that adjustment assistance would be a more effective remedy than import relief. Under those circumstances, the President would direct that expeditious treatment be given petitions for such assistance.

In lieu of the order of preference in the House bill, section 203(a) of the Committee bill would require the President (in cases where adjustment assistance would not offer a suitable alternative) to provide such import relief under section 203(a) as is necessary, taken into account the factors set forth in section 202(c), to prevent or remedy serious injury, or the threat thereof, to the industry in question, and to facilitate the orderly adjustment to new competitive conditions by the industry in question. It is the Committee's intent that the President provide, to the maximum degree consistent with the objectives of this section and the factors he must consider under section 202(c), the relief recommended by the majority of the Commission. That relief may take the form of:

- (1) an increase in, or imposition of, duty on the article causing or threatening to cause serious injury to such industry;
- (2) a tariff-rate quota on such article;
- (3) a modification of, or imposition of, quantitative restrictions on the import into the United States of such article;
- (4) orderly marketing agreements with foreign countries limiting the export from foreign countries and the import into the United States of such article;
- (5) any combination of such actions.

Accordingly, while the President has flexibility in determining the remedy he must impose, the Committee feels that the remedy should be commensurate with the injury found by the Commission. If the remedial action taken by the President differs from the action recommended to him by the Commission under section 201(b), he shall state the reason for imposing a different remedy. If, under section 203(c)(1), the President reports that he is taking action which differs from the recommendation of the Commission, the Congress could adopt a concurrent resolution, by majority vote of both Houses of Congress within 90 days after the President so reports, disapproving the action taken by the President. In the event that the Congress so adopts a disapproval resolution under section 203(c)(2), the President would be required within thirty days after the adoption of such resolution to proclaim the increase in, or imposition of, any duty or import restriction on the article which was recommended by the Commission under section 201(b).

The Committee bill retains the House provisions under section 203(d) which would limit any duty increase made pursuant to the authority of this section to a rate which is no more than 50% ad valorem above the rate (if any) existing at the time of the proclamation. This section would further provide that any quantitative restriction and any orderly marketing agreement negotiated pursuant to the authority granted must permit the importation of a quantity or value of the article which is not less than the quantity or value of the article imported into the United States during the most recent period which the President determines is representative of such article. The Committee feels that this section should not be construed to mean that there could not be any cut-back in imports from the level existing when injury is found to exist.

Under subsection (e) of section 203, the import relief proclaimed would take effect within 60 days after he receives an affirmative finding of injury from the Commission), unless the President announces his intention to negotiate orderly marketing agreements under subsections (a) (4) or (5) or (b) (5), in which case, the import relief would be proclaimed and take effect within 90 days after the import relief determination date. The intention of this provision is to permit the President to have sufficient time to negotiate an orderly marketing agreement with the foreign suppliers. However, under section 203(e) (2), the President could also provide import relief in the form of tariffs, tariff-quotas or quotas, or any combination thereof, and, after such relief takes effect, negotiate orderly marketing agreements with the foreign countries. If such agreements take effect, he could suspend or terminate in whole or in part any import relief previously granted. Moreover, if the President negotiates an orderly marketing agreement under subsections (a) (4) or (5) or (b) (5) and if such agreement does not continue to be effective, the President must provide such import relief as he deems necessary to prevent serious injury.

The Committee bill also provides under section 203(f) that the President could suspend item 806.30 or 807.00 of the Tariff Schedules of the United States. These items could be suspended, however, only if the Commission determines in the course of its investigation that serious injury or threat thereof to the domestic industry is substantially caused by imports resulting from the application of item 806.30 or 807.00. In other words, it is not intended that these items be suspended unless the imports admitted thereunder are found to be the cause of the serious injury within the meaning of this section. Similarly, the President could suspend tariff preferences on any article eligible under Title V of this bill (without imposing import relief measures generally on the article), but only when the Commission determines that serious injury, or threat thereof, to the domestic industry, is substantially caused by imports of articles receiving such preferences.<sup>1</sup>

Section 203(g) would provide the President with authority: (1) to issue regulations to administer quantitative restrictions proclaimed pursuant to section 203 (a) or (c); (2) to issue regulations to govern the entry or withdrawal from warehouse of articles covered by an orderly marketing agreement concluded pursuant to section 203 (a) or (c) (2) in order to carry out one or more such agreements so concluded among countries accounting for a major part of the United States imports of the article covered by such agreements; and (3) to issue regulations governing the entry or withdrawal from warehouse of like articles which are the product of countries not parties to such agreements. Any regulations so issued would be required to insure against inequitable sharing of imports by a relatively small number of the larger importers, to the extent practical and consistent with efficient and fair administration.

Section 203(h)(1) would require that any import relief provided under section 203 terminate not later than 5 years after the effective date of the initial grant of relief unless extended by the President for one additional three-year period as provided for by section 203(h)(3).

<sup>1</sup> Under title V of the bill, whenever any general import relief measure is imposed on all imports of an article, some of which were benefitting from preferences, the preferential treatment on such article would also cease to apply.

Such extension would require a determination by the President that the renewal is in the national interest, taking into account advice received from the Commission and the considerations described in section 202(c); Section 203(h)(3) would further require that relief may be renewed at a level no greater than the level in effect immediately before the extension.

Section 203(h)(2) would provide that if the relief is granted for a period greater than three years, then to the extent feasible, such relief should be phased out during the period for which relief is granted, with the first reduction of relief taking effect within 3 years of the initial effective date of the relief.

Section 203(h)(3) provides that import relief provided pursuant to section 203 or sections 351 or 352 of the Trade Expansion Act may be extended for one (but no more than one) three-year period at a level of relief no greater than that in effect before the extension.

Section 203(h)(4) provides that for purposes of subsection 203(h) and (i), the import relief provided in the case of an orderly marketing agreement is the level of relief contemplated by such agreement. The Committee deleted section 203(h)(4) of the House bill, which would have permitted the President to reduce or terminate any import relief when he determined it to be in the national interest, after taking into consideration advice from the Commission and other agencies.

Section 203(i) would require the Commission to perform certain functions relating to the termination or reduction of import relief provided pursuant to section 203.

Section 203(i)(1) would require that so long as any import relief under section 203 or sections 351 or 352 of the Trade Expansion Act remains in effect, the Commission shall keep under review developments with respect to the industry concerned (including the progress and specific efforts made by the firms in the industry concerned to adjust to import competition), and shall upon request of the President make reports to him concerning such developments.

Section 203(i)(2) would provide that upon request of the President or upon its own motion, the Commission must advise the President of its judgment as to the probable economic effect on the industry concerned of the extension, reduction or termination of the import relief provided.

Section 203(i)(3) would require that when a petition on behalf of the industry concerned is filed with the Commission between 6 and 9 months before the relief under this bill or the Trade Expansion Act is to terminate by reason of the expiration of the initial period therefor, the Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.

Section 203(i)(4) would provide that in advising the President under section 203(i)(2) or (3) as to the probable economic effect on the industry concerned, the Commission must take into account all economic factors which it considers relevant, including the considerations set forth in section 202(c) and the progress and specific efforts made by the industry concerned to adjust to import competition.

Section 203(i)(5) would require that the Commission hold an investigation with a hearing before giving advice to the President pursuant to section 203(i)(2) or (3).

Section 203(j) would provide that no investigation for the purposes of section 201 may be made with respect to an article which has received import relief under this section unless 2 years have elapsed since the expiration of the import relief provided pursuant to section 203.

The Committee amended the provisions of Section 203 dealing with the extension of existing import relief actions (those imposed pursuant to Section 351 or 352 of the Trade Expansion Act) so as to permit the extension of such existing actions pursuant to the authority of, and subject to the limitations in, Section 203 of the Committee bill. Under the House bill, there was no provision for extending existing import relief actions.



## CHAPTER 2. ADJUSTMENT ASSISTANCE FOR WORKERS

### THE NEED FOR A NEW PROGRAM

In the Trade Expansion Act of 1962, Congress established a special program of worker adjustment assistance in the belief that the special nature of employment dislocation resulting from changes in trade policy necessitated a level of worker protection somewhat beyond what is available through regular State unemployment insurance programs. Increases in imports of a given type of product can simultaneously and abruptly produce a combination of situations which have a particularly severe effect on employment. Because entire industries and not only individual firms may be adversely affected, workers may not have any realistic opportunity to find new employment which is at all related to the skills and training they may have accumulated over many years. Moreover, it can happen that the affected industry is one which is concentrated in a particular region with the result that the possibility of quickly absorbing displaced workers into other types of employment available in the area would be minimal. Thus, because trade-related unemployment may differ somewhat in nature from unemployment arising from other causes and because such trade-caused unemployment is a result of a Federal policy of encouraging increased foreign trade, worker adjustment assistance was provided for in the 1962 legislation.

The worker adjustment assistance provisions enacted in 1962, however, have clearly not been very effective. For the first seven years of the program, no worker was found eligible for its benefits. Since November, 1969, when the first worker certification was issued, only an estimated 47,000 workers in 29 States have been certified as eligible. Total outlays for worker adjustment assistance total less than \$69 million over the entire period (an average outlay of about \$1,500 per worker). Moreover, the relatively meager information that is available with respect to the operations of the program indicate that, even where workers have been found eligible, the program has often functioned in such a manner that its objectives were frustrated. The petitioning process has proven to be cumbersome and time-consuming. Many recipients did not receive payments under the program until long after they became unemployed because of increased imports. Too often the assistance which they received came too late for it to have its maximum beneficial impact. In light of this experience, the Committee has provided a new adjustment assistance program with eased qualifying criteria and a streamlined petitioning process. It is the intention of the Committee that workers displaced by increased imports receive all the benefits to which they are entitled in an expeditious manner. In addition, the Committee bill would provide more adequate benefit payments to eligible recipients and would make several improvements in the other services which these recipients would receive under the program.

The Committee expects that the new adjustment assistance program for workers established by this bill will operate in a far more satisfactory manner than the program provided for in the 1962 legislation. However, because of the unfortunate experience under that program, the Committee feels that it would be appropriate to authorize the new program for a limited period so as to assure that it will be thoroughly reviewed within a few years. Accordingly, the Committee bill provides for the expiration of the new program of worker adjustment assistance as of September 30, 1980. The bill also directs the General Accounting Office to review and evaluate the program and to report the results of its study by January 1, 1979 so that Congress will have available the necessary information on which to base its further action in this area prior to the September 30, 1980 expiration of the program. (The GAO evaluation, which will also cover the firm and community assistance programs, is discussed in more detail on page 161.)

#### FUNDING OF THE PROGRAM

The Committee anticipates that the new worker adjustment assistance program, because it will in fact provide the intended benefits, will involve considerably greater costs than the current program. The Committee feels, however, that Federal funding should result in improved benefits for the adversely affected workers and should not simply replace existing State-funded benefits with federally-funded benefits. Accordingly, the Committee bill eliminates the provision of present law (and the House bill) which provides for Federal reimbursement to the States for any unemployment insurance provided under State programs to workers who are also eligible for adjustment assistance under this program. Under the Committee bill, Federal funding would be provided only for that portion of the worker's benefits which exceed his entitlement under the State unemployment program for workers generally. The Federal benefits would be financed through a trust fund with annual appropriations coming out of customs receipts.

#### PETITIONS

##### (Section 221)

The bill provides for filing of petitions with the Secretary of Labor by groups of workers or their duly authorized representatives for a certification of eligibility to apply for adjustment assistance. It is intended that a group of three or more workers in a firm may qualify as a petitioner for a certification to apply for adjustment assistance. The Secretary must promptly publish notice in the Federal Register that he has received the petition and initiated an investigation.

The bill incorporates the same filing provision with respect to workers' petitions as contained in section 301(a)(2) of the Trade Expansion Act except that petitions are to be filed with the Secretary instead of the U.S. International Trade Commission. The provisions of section 302 of the Trade Expansion Act calling for investigations and determinations by the Commission relating to workers' petitions would be eliminated.

The Committee intends that the Secretary should establish minimal filing requirements so that in the normal case a petition will be considered filed upon receipt by the Secretary.

## GROUP ELIGIBILITY REQUIREMENTS

## (Section 222)

The Committee bill replaces section 301(c) (2) and (3) of the Trade Expansion Act of 1962 with new criteria for certification of eligibility of groups of workers to apply for adjustment assistance. Under the bill, the Secretary of Labor rather than the U.S. International Trade Commission would determine whether the criteria have been met. The bill would also eliminate the requirement in the Trade Expansion Act of a causal link between increased imports and trade agreement concessions, and require that an absolute increase in imports only "contribute importantly" to the separations rather than be their major cause as required by present law. In addition to requiring that a significant number or proportion of the workers in a firm have become or are threatened to become totally or partially separated, sales or production, or both, of the affected firm or subdivision would have to decline on an absolute basis with the increased imports contributing importantly to the decline.

The requirement that import increases contribute "importantly" may be contrasted with the "substantial cause" language in the import relief section of the bill. "Substantial cause" in determining eligibility for import relief includes the concept "important" but adds another requirement, that the cause be not less than any other single cause. Therefore, "importantly" as used in determining eligibility for worker adjustment assistance is an easier standard; a cause may have contributed importantly even though it contributed less than another single cause. A cause must be significantly more than *de minimis* to have contributed importantly, but the Committee does not believe that any mechanical designation such as a percentage of causation can be realistically applied. For example, the Secretary may find that imports were at such a level that, under ordinary circumstances, they would have been an important factor in causing total or partial separations of a group of workers and in the decline in sales or production, but that another cause was so dominant that the separations and decline in sales or production would have been essentially the same irrespective of the influence of the import increase. In such case, the Secretary would not find that increased imports had "contributed importantly."

Similarly, total or partial separations that would have occurred regardless of the level of imports, e.g., those resulting from domestic competition, seasonal, cyclical, or technological factors are not intended to be covered by the program. To this end it is required that imports increase absolutely—since it is more likely to be the case under conditions of absolute increases of imports of like and directly competitive products that imports would contribute importantly to the total or partial separation of workers or the threat of such total or partial separation.

It is intended that in most cases total or partial separation of a significant number or proportion of the workers should be found where the total or partial separation, or both, in a firm, or an appropriate subdivision thereof, is the equivalent to a total unemployment of 5 percent of the workers or 50 workers, whichever is less. However, in firms with relatively small work forces, a minimum of 3 workers would ordinarily have to be affected.



## DETERMINATION BY SECRETARY OF LABOR

## (Section 223)

The bill provides that as soon as possible, but not later than 60 days after a petition is filed, the Secretary must determine whether a substantial number or proportion of workers have become, or are threatened to become, totally or partially separated because of increased imports. The Secretary is to issue a certification of eligibility to apply for adjustment assistance covering workers in any group which meets such requirements. The certification is of a continuing nature, and covers workers totally or partially separated on or after the impact date through the date of termination of the certification.

Each certification would specify the date on which the total or partial separation began or threatened to begin. The date to be determined is the earliest date on which any part of the total or partial separations involving a significant number or proportion of workers began or threatened to begin. The date when total or partial separations threatened to begin is the date on which it could reasonably be predicted that separations were imminent.

A certification of eligibility to apply for assistance would not apply to any worker who was last totally or partially separated from the firm or subdivision prior to his application more than 1 year before the date of the petition upon which the certification covering him was granted or more than 6 months before the effective date of the new program. The transitional provisions of the bill discussed later apply different requirements for groups of workers whose petitions under the present program are pending when this chapter of the bill becomes effective.

The Secretary would be required to publish promptly in the Federal Register a summary of his determination on a worker petition and the reasons for that determination. If the determination is affirmative, the Secretary would issue a certification and the summary would therefore be of the certification.

The bill provides for the termination of certifications of eligibility to apply for adjustment assistance if the Secretary determines that total or partial separations are no longer attributable to the conditions specified in the bill. This is the same procedure as in section 302(e) of the Trade Expansion Act, except that the Secretary is given the statutory authority to terminate, instead of by delegation from the President, and the publication of terminations in the Federal Register is expressly required by statute instead of by regulation. As in the existing provisions, it is expressly provided that such termination shall apply only to total or partial separations occurring after the termination date specified by the Secretary. Therefore, the termination would not affect the eligibility of workers separated before the termination date to apply for and receive assistance.

The bill provides that the Secretary of Labor is to be notified by the Commission whenever it initiates an investigation of an industry under section 201 and that the Secretary shall immediately begin a study of the number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified for adjustment assistance and the extent to which the adjustment of such workers may be facilitated through the use of existing

programs. The Secretary is to make his report to the President not later than 15 days after the Commission makes its report under section 201.

A certification of eligibility to apply for assistance should be sufficient to establish eligibility for assistance under this program for all workers to whom it is applicable if they meet the qualifying requirements outlined in the next section. There would be no requirement that a worker establish on an individual basis that his unemployment is related to increased imports.

## QUALIFYING REQUIREMENTS FOR WORKERS

### (Section 231)

The Committee has changed the qualifying requirements which individual workers must meet in order to receive benefits.

Under the bill a worker must have been employed with the same trade impacted firm or subdivision for 26 out of the 52 weeks preceding his separation at wages of at least \$30 a week. These qualifications differ from those in present law in that: (1) they omit the requirement of total employment during 78 of 156 weeks immediately preceding total or partial separation, (2) they increase the required wages for a qualifying week of employment from \$15 to \$30, and (3) they add a new requirement that the qualifying weeks be with a single firm or subdivision of a firm.

In order to qualify for weekly payments, an adversely affected worker covered by a certification under section 223 must file an application. The worker's last total or partial separation before he applies must have occurred on or after the "impact date" (the date specified in the certification when total or partial separation began or threatened to begin), within 2 years after the date on which the Secretary issued the certification covering the worker, and before the termination date. The date of issuance of the certification is the date on which the Secretary or his delegate signs the certification.

## WEEKLY AMOUNTS AND DURATION OF BENEFITS

### (Sections 232-233)

The basic formula for the weekly trade readjustment allowance payable to an adversely affected worker would be increased from 65 percent to 70 percent of his average weekly wage. The maximum trade readjustment allowance for any week would be increased from 65 percent to 100 percent of the average weekly wage in manufacturing, which at present is approximately \$180. The Committee believes that the increases in the trade readjustment allowances which it is recommending are needed to assure that workers whose employment is adversely affected by increased imports will receive adequate compensation.

Benefits would generally be available for up to 52 weeks. Workers over 60 could receive an additional 26 weeks. Workers exhausting benefits while still in approved training programs could receive benefits for an additional 26 weeks provided that they applied for such training within 26 weeks after they became unemployed or, if later, after the date on which the Secretary of Labor certifies their eligibility to apply for trade readjustment benefits. In no case would a worker

qualify for more than 78 weeks of benefits. The worker's allowance is to be reduced by 50 percent of any earnings. In addition, if the total of a worker's earnings, unemployment insurance, training allowance and trade readjustment allowance for a week is more than 10 percentage points higher than his trade readjustment allowances alone, or is more than 130 percent of the average weekly manufacturing wage, the excess would be deducted dollar-for-dollar from his trade readjustment allowance.

The Committee bill differs from the bill passed by the House of Representatives in that adjustment assistance levels would be 70 percent of the amount of the worker's average weekly earnings for the entire period of his eligibility whereas under the House bill the level of benefits would have been reduced to 65 percent of average weekly earnings after 26 weeks of eligibility had been used. Also the Committee bill provides 26 weeks of additional eligibility for older workers compared to 13 weeks in the House bill.

## EMPLOYMENT SERVICES

### (Section 235)

The bill provides that the Secretary of Labor should make every reasonable effort to secure counseling, testing, and placement services, and supportive and other services provided for under any Federal law. The Secretary would procure such services through agreements with cooperating State agencies whenever appropriate.

It is the Committee's intention that the Secretary should make arrangements for effective referral of the workers for these services to the extent such services are provided for under any other Federal law, and that appropriations made available under the bill would not be expended to defray the cost or expense of the actual services. In procuring such services through agreements with cooperating State agencies, it is expected that the services would be funded through funds made available under other programs, including revenue-sharing arrangements.

The Committee intends that the phrase "supportive and other services" would include, to the extent provided in Federal law, services such as work orientation, basic education, communication skills, employment skills, minor health services, and other services which are necessary to prepare a worker for full employment in accordance with his capabilities and employment opportunities. It is also intended that the minor health services referred to above should be limited to those which are necessary to correct a condition that would otherwise prevent a worker from being able to accept a training or employment opportunity.

## TRAINING

### (Section 236)

The Committee bill authorizes appropriations of \$50 million for fiscal year 1975 and such sums as may be necessary for the following 5 years for training of workers who are displaced because of increased imports and who qualify under this program. It is intended that every

effort be made to place workers in suitable employment through the use of employment services provided for in Section 235 and that training be authorized only when the Secretary finds that suitable employment is not otherwise available.

While the bill does not bar the Secretary from providing any type of training which he may find to be appropriate, it clearly requires that the highest priority be given to developing and placing displaced workers in training on-the-job. The ultimate objective of training programs is the placement of a worker in actual employment. On-the-job training is, therefore, the most desirable type of training since it accomplishes this objective at the beginning rather than at the end of the process. The bill accordingly directs the maximum feasible use of training on the job.

In utilizing this training authority provided for in the bill, it is intended that the Secretary would place workers in programs established under other provisions of law such as the Comprehensive Employment and Training Act. When workers eligible for adjustment assistance are placed in such programs, the Secretary would reimburse the agency operating the training program when he determines that the placement could not be accomplished in the absence of such reimbursement. Under these reimbursement provisions, the Secretary will be able to obtain training in such programs as CETA for workers eligible for adjustment assistance even though they do not meet the usual eligibility requirements for such programs.

Similar provisions for training were included in the bill as passed by the House of Representatives; however, the House bill did not include an authorization of appropriations for this purpose. Thus, under the House bill training could be provided only to the extent that funding was available under other programs.

The bill provides supplemental assistance to defray transportation and subsistence costs when training is provided in facilities which are not within commuting distance. This provision is identical in substance to that of current law, except that the maximum amounts are increased from \$5 to \$15 per day for subsistence and from 10 to 12 cents per mile for transportation expenses.

When a worker is referred to a program of suitable training by the Secretary, he would be disqualified from receiving payments under this program if, without good cause, he refuses to accept or continue in such training or fails to make satisfactory progress in it. This disqualification would continue until he enters, resumes, or begins to make satisfactory progress in the training. This provision is identical in substance to section 327 of the Trade Expansion Act.

## JOB SEARCH ALLOWANCES

### (Section 237)

To make it easier for workers to obtain new employment as quickly as possible the bill—for the first time in the adjustment assistance program—provides that a worker covered by a certification may file an application with the Secretary of Labor for a job search allowance. This allowance would provide reimbursement to the worker of 80 percent of the cost of his necessary job search expenses, not to exceed \$500.

The allowance could be granted only to assist the worker in obtaining employment within the United States, only when the worker cannot reasonably be expected to obtain suitable employment in his commuting area, and only if the application for the allowance is filed within 1 year from his last total separation prior to his application for adjustment assistance.

## RELOCATION ALLOWANCES

### (Section 238)

The provisions for relocation allowances are substantially the same as those in present law. However, the Committee has eased the qualifying requirements for relocation allowances by omitting the head-of-household requirement contained in present law. The Committee believes that relocation allowances should also be made available to facilitate the reentry into employment of single individuals who may be even more likely than heads of households to benefit from relocation allowances.

Relocation allowances would be afforded (upon application and meeting qualifying requirements) to any adversely affected worker covered by a certification who has been totally separated from adversely affected employment. The qualifying requirements (apart from the head-of-household test) are identical to those of present law.

A relocation allowance could be paid only if, for the week in which the worker files an application for such allowance, he is entitled to a trade readjustment allowance or would be so entitled (without regard to whether he filed application for a trade readjustment allowance) if it were not for the fact that he has obtained the employment to which he wishes to relocate.

To be entitled to a relocation allowance, the worker must relocate within a reasonable time after he applies for such allowance. If the applicant is a worker undergoing vocational training under the provisions of any Federal statute he must relocate within a reasonable time after the conclusion of such training.

A relocation allowance could not be granted to more than one member of the family with respect to the same relocation. Thus, for example, a husband and wife who each met all of the requirements would be entitled to only one relocation allowance to relocate to another domicile.

Relocation allowances under the bill consist of (1) 80 percent, rather than 100 percent as provided in present law, of the reasonable and necessary expenses (as specified in regulations prescribed by the Secretary of Labor) incurred in transporting the worker, his family (if any) and household effects from their present location, and (2) a lump sum payment equivalent to three times the worker's average weekly wage, up to a maximum payment of \$500, rather than 2½ times the average weekly manufacturing wage as provided in the present law.

## ADMINISTRATION OF PROGRAM

### (Section 239)

The bill provides for the administration of the trade readjustment benefits by the States under agreements between each State and the Secretary of Labor. These agreements would include a provision under

which State unemployment insurance benefits would not be reduced because of a worker's entitlement to trade readjustment payments. Similar provisions are included in the present law and in the House bill. Unlike the existing program and the House bill, however, the Committee bill does not provide for the State to be reimbursed from Federal funds for unemployment insurance benefits paid to affected workers under the provisions of State law.

In addition, the Committee has added a provision reducing certain tax credits otherwise available to employers in any State which does reduce its unemployment benefits because of a worker's entitlement to trade adjustment benefits. Employers are presently allowed to credit their payments of State unemployment taxes against their liability for the Federal Unemployment Tax. The maximum allowable credit is 2.7 percent out of the total tax of 3.2 percent. Under the Committee bill, the allowable credit would be reduced to 2.25 percent out of the total tax of 3.2 percent in any State which does not administer the benefits provided by the bill without reducing State unemployment benefits.

States would have until July 1, 1975 to enter into an appropriate agreement with the Secretary of Labor so that employers in the State would not suffer the reduction in tax credits. The Committee intends, however, that any agreements which are entered into after the effective date of the new adjustment assistance program will include an agreement on the part of the State to reimburse workers for any reductions in unemployment benefits on account of adjustment assistance if any such reductions were made prior to the effective date of the agreement.

#### GENERAL PROVISIONS

(Sections 234, 240-244, 248-250)

The bill contains general provisions relating to entering into agreements with the States, the liabilities of certifying and disbursing officers, recovery of overpayments and penalties, which are substantially similar to the provisions of present law. These provisions differ from those of present law, however, in the following respects.

Determinations of entitlement to payments made by cooperating State agencies under agreements with the Secretary would be subject to review in exactly the same manner and to the same extent as determinations under the applicable State law. Section 336 of the Trade Expansion Act provides for such review to the maximum extent practicable and consistent with the worker assistance provisions of that act. The bill would have the effect of channeling all questions arising from determinations by State agencies through the normal State review procedure.

The bill would authorize the Secretary to arrange by regulations for performance of necessary functions where there is no agreement in force with a State or State agency. Among the functions to be carried out is provision of a fair hearing for any worker whose application for program benefits is denied. This provision follows the terms of 5 U.S.C. § 8503(c), a section that states the procedures for provision of unemployment compensation to Federal employees absent a State agreement to administer that compensation program.

The bill provides for review by the courts of final determinations of entitlement to program benefits in the same manner and to the same extent as is provided by the judicial review provision of the Social

Security program. Section 336 of the Trade Expansion Act provides that determinations as to entitlement of individuals for adjustment assistance shall be final and not subject to court review except as provided in the Secretary's regulations.

In addition, the Committee has added to the House bill amendments which would specifically grant subpoena power to the Secretary of Labor and which would provide for judicial review of determinations made by the Secretary of Labor with respect to the eligibility of workers to apply for adjustment assistance.

## FUNDING

### (Section 245)

The bill provides for the establishment of a trust fund (the "Adjustment Assistance Trust Fund") to be used to finance the costs of the worker adjustment assistance program including the administrative costs of the Labor Department and cooperating States. Annual appropriations to the trust fund, out of customs collections, of such sums as are necessary to pay such costs are authorized. The Secretary of Labor would certify to the Secretary of the Treasury payments that are due to States and the Secretary of the Treasury will make such payments from the trust fund.

## TRANSITIONAL PROVISIONS

### (Section 246)

Under the Committee bill, benefits would be paid to all eligible recipients for weeks of unemployment beginning on and after the effective date of the chapter establishing the new trade assistance program.

In all cases where workers receive benefits for weeks of unemployment before the effective date of the new chapter, such benefits will be as provided under present law. It is intended that workers whose individual applications for adjustment assistance have been approved under the existing program shall receive benefits as provided in the bill for weeks of unemployment which occur after the effective date of this chapter and in which they are eligible for trade readjustment allowances.

If by the effective date of this chapter workers have not completed the process of qualifying for adjustment assistance under the present program they would be permitted to file a group petition, or apply for individual benefits, as the case may be, under the liberalized eligibility criteria of the bill. In order to take advantage of this provision, workers must meet the time limitations on eligibility for petitions in the bill, which include a showing that separation occurred no earlier than 6 months before the effective date of the new adjustment assistance chapter.

An exception to the time limitations on weeks of unemployment that can be covered by certifications under the bill is made for groups of workers that filed petitions under present law more than 4 months before the effective date but did not receive approval (certification) or denial of their petitions before the new chapter went into effect.

Where (1) a petition for certification has been filed more than 4 months before the effective date of this chapter by a group of workers or its authorized representative, (2) the Commission has not rejected the petition, and (3) a certification has not been issued, the group of workers or its representative may file a petition under the new chapter within 90 days after the chapter becomes effective. If a certification is issued pursuant to such a petition, the restriction against granting allowances for weeks of unemployment more than 6 months before the effective date of the chapter shall not apply, and the restriction against granting allowances for weeks of unemployment more than 1 year before the filing of a petition shall be calculated on the basis of the original petition filing under present law. Without this exception, a group in this situation might be unable to qualify for benefits even though it in fact met all the qualifications called for by present law and had applied in a timely fashion. The requirement that petitions must be filed more than 4 months before the effective date of the new chapter is intended to allow the Commission time to examine such petitions before the expiration of the 1962 act. Thus petitions which do not meet the requirements of the present law would be rejected, for the most part, and there would be little chance for petitioners to use the special relief provided for pending cases in order to circumvent the cutoff provisions of the new chapter.

## REGULATIONS

### (Section 248)

The bill authorizes the Secretary of Labor to prescribe such regulations as may be necessary to carry out the worker adjustment program.

The Committee notes that the purpose of the worker assistance program is to protect American citizens and other legal residents of the United States from the adverse impact on their employment which may be caused by increased imports. Accordingly, it would be wholly inappropriate for benefits under this program to be paid to illegal aliens whose presence in this country unfairly and unlawfully deprives citizens and other legal residents of job opportunities. The Committee expects, therefore, that the Secretary of Labor will utilize the regulatory authority granted him by the bill to ensure that the program is administered in such a way as to assure that its benefits are not granted to illegal aliens.





### CHAPTER 3. ADJUSTMENT ASSISTANCE FOR FIRMS

(Sections 251-264)

The Trade Expansion Act of 1962 created a program of adjustment assistance for firms adversely affected by increased imports. The intent of the Congress was to assist firms whose markets were disrupted by imports attributable to import concessions in adjusting to changed competitive conditions. Under present law, there are two ways a firm may become eligible for assistance: first, as a component of an industry certified as eligible for escape clause relief; and second, as an individual firm directly petitioning the Tariff Commission for a certification of eligibility to apply for assistance. In the latter case, the petitioning firm must demonstrate to the satisfaction of the Tariff Commission that, as a result *in major part* of concessions granted under trade agreements, an article like or directly competitive with an article produced by the petitioners is being imported in such increased quantities as to be *the major factor* causing or threatening to cause serious injury to the petitioning firm.

Firms certified as eligible to receive adjustment assistance under present law may receive technical assistance, financial assistance, and tax assistance. Technical assistance includes aid in preparing an adjustment proposal for a firm, managerial advice and counseling, research and development assistance, and market research. Financial assistance consists of loans—either direct, or in cooperation with banks or other lenders—for the purchase of land, plant, buildings, equipment, facilities, machinery, and, in exceptional cases, for use as working capital. There is no limit on the size of loans, but maturities may not exceed 25 years. The applicable interest rate is determined by the Treasury Department.

Tax assistance, which would be terminated by the bill, has been a net operating loss carryback over a five-year period as provided by the Internal Revenue Service when the Secretary of Commerce determines, among other legal requirements, that such tax assistance will materially contribute to the economic adjustment of the firm. Without such a determination by the Secretary, the tax loss carryback is limited to the normal three years.

The Committee firmly believes that the Federal Government bears a special responsibility to workers and firms adversely affected by increased imports, especially those resulting because of Federal trade decisions which are undertaken in the name of national policy. In the case of firms, increased imports overnight can eliminate the competitiveness of a firm or an entire industry. Accordingly, the Committee's bill reaffirms the role of firm adjustment assistance and adopts the basic provisions of the House bill which were directed at improving both the substance and procedure of the present program.

## PETITIONS AND DETERMINATIONS

## (Section 251)

The approach to firm adjustment assistance contained in the bill differs in several important respects from the present program of adjustment aid under the Trade Expansion Act of 1962. Most importantly, the qualifying criteria would be significantly relaxed. In the twelve-year history of the present program less than thirty-five firms were certified eligible to apply for assistance; fewer than twenty actually received assistance pursuant to certified adjustment proposals. Under the present bill it is expected that many more firms would qualify for assistance. Despite the increased number of firms which are expected to be assisted, the budgetary cost should not be unreasonable given specific ceilings on both direct loans and loan guarantees and the requirement that first choice be accorded guarantees over direct loans. The Executive Branch estimates the first (full) year cost of firm adjustment assistance would be approximately \$20 million.

Under the bill, the International Trade (Tariff) Commission would no longer play a direct role in determining the eligibility of firms for adjustment assistance. Under section 251, petitions for certification of eligibility to apply for adjustment assistance would be filed with the Secretary of Commerce by individual firms or their representatives, rather than with the U.S. Tariff Commission as has been the case under the Trade Expansion Act of 1962.

The Secretary of Commerce would be required to promptly publish a notice in the Federal Register that he has received the petition and begun an investigation. Provision is made for submission, within 10 days after such publication, by any other person, organization, or group having a substantial interest in the proceedings, of a request for a hearing, following which the Secretary shall provide for a public hearing. Interested persons will be provided an opportunity to be present, produce evidence, and present their views.

Under the bill, a firm would be certified as eligible to apply for adjustment assistance if the Secretary, not later than 60 days after the petition is filed, determines:

- (1) that a significant number or proportion of workers in the firm have been, or threaten to become, totally or partially separated;
- (2) that sales or production or both of such firm have decreased absolutely, and
- (3) that absolute increases in imports have *contributed importantly* to such total or partial separation or threat thereof and to such decline in sales or production.

The bill would eliminate the requirement that there be any causal link between tariff concessions and increased imports. Increased imports would only have to *contribute importantly* to any separation and to the decline in sales or production. Under present law, increased imports must be the *major factor* causing or threatening serious injury to the firm.

In paragraph 2 above, the term, "decreased absolutely," is used in reference to sales and production irrespective of industry or market fluctuations and relative only to the previous performance of the firm.

As in the case of worker petitions, it is intended that in most cases total or partial separation of a significant number or proportion of the workers should be found where the total or partial separation, or both, in a firm, or an appropriate subdivision thereof, is the equivalent to a total unemployment of 5 percent of the workers or 50 workers, whichever is less. At the same time, there are many workers in plants employing fewer than 50 workers. Accordingly, there may be cases where as few as three workers in a firm, or an appropriate subdivision thereof, would constitute a significant number or proportion of the workers. The Committee also intends that agricultural operations will be covered in the firm adjustment assistance program. In this regard, the criterion of a "significant number of workers" will be met by an individual farmer in the case of farms which are sole proprietorships. A "firm" is defined under the provisions for adjustment assistance to firms as including an individual proprietorship, partnership, joint venture, association, corporation, business trust, cooperative, trustee in bankruptcy, and receiver under decree of any court. This legal definition would apply to the term "firm" as used throughout Title II, especially under the provisions for adjustment assistance to workers. Thus, any one of the above-cited legal entities conducting an agricultural operation could be considered as a firm under the adjustment assistance provisions of this bill, and accordingly, workers in such operations would be covered on the same basis as industrial workers.

With respect to the coverage of agricultural operations in the firm adjustment assistance program, the Committee intends that they be covered providing it is understood that the criterion of "significant number of workers" is met by an individual farmer in the case of farms which are sole proprietorships.

Here again it is necessary to reiterate that the requirement that import increases contribute "importantly" should be contrasted with the "substantial cause" language in the import relief section of the bill. "Substantial cause" in determining eligibility for import relief includes the concept "important" but adds another requirement, that the cause be not less than any other single cause. Therefore, "importantly" as used in determining eligibility for worker or firm adjustment assistance is an easier standard; a cause may have contributed importantly even though it contributed less than another single cause. Generally, it is intended that the criteria of eligibility for firms should be interpreted as nearly as possible in conformity with the definitions set forth in the worker adjustment assistance sections of this report.

## APPROVAL OF FIRM ADJUSTMENT PROPOSALS

### (Section 252)

The determination of whether a firm is certified eligible to apply for adjustment assistance must be made within 60 days. After a firm is certified, it has 2 years in which to file an application for adjustment assistance. As under the Trade Expansion Act, the certification of a firm as eligible to apply for adjustment assistance does not mean that such assistance will automatically be granted. There may be firms for which adjustment assistance is not appropriate or which are

simply unable to develop a viable adjustment proposal under the statutory criteria. The application for adjustment assistance must include the firm's proposal for economic adjustment. It is not intended that the 2-year time limit would preclude a firm from revising or amending its initial proposal after the expiration of the 2-year period.

Before an adjustment proposal of a firm can be approved and assistance furnished, the Secretary must find that the proposal—

- (1) is reasonably calculated materially to contribute to the economic adjustment of the firm,
- (2) gives adequate consideration to the interests of the workers of such firm, and
- (3) demonstrates that the firm will make all reasonable efforts to use its own resources for economic development.

These criteria are virtually the same as in existing law. In addition, the Secretary must find that the firm has no reasonable access to financing through the private capital market. This requirement is similar to a provision of existing law and is intended to preclude a firm from obtaining financial assistance from the Government when the firm could obtain all of the needed funds through the private capital market at a reasonable rate of interest. In some cases, a firm is able to obtain a private loan for a portion of the total amount needed with the Government supplying the remainder. It is not intended that the word "access" be interpreted to preclude Government assistance when the firm has such access for only a portion of the needed amount.

It is no longer required that the Secretary of Commerce refer each certified adjustment proposal to such agency or agencies as he determines to be appropriate to furnish necessary technical and financial assistance. This condition in practice became a nullity, because it proved almost impossible to develop a meaningful adjustment proposal without a simultaneous development of the terms and conditions of any assistance to be granted.

Adjustment assistance under this chapter of the bill would include technical assistance as well as financial assistance individually or in combination. The provision under present law for tax assistance in the form of extended carryback was found by the House to have little application to the type of firms which were certified as eligible for adjustment assistance and that view has been endorsed by the Committee.

#### TECHNICAL ASSISTANCE

##### (Section 253)

Technical assistance for eligible firms would be for (1) the development and preparation of an economic adjustment proposal, and (2) the implementation of the proposal, or both. Costs of technical assistance furnished through private (nongovernmental) individuals, firms, and institutions (including consulting services), which could be borne by the U.S. Government would be limited to not more than 75 percent of the total. Thus, a technical assistance contractor could receive up to 75 percent of the cost of such services from the Government. If a firm could not afford to pay any of the cost of technical assistance, the Government could advance the total amount as long as adequate provision for repayment of at least 25 percent of the total is included.

In some circumstances the Government's share of the cost may be substantially less than 75 percent, and it is the intention of this Committee that the payment of up to 75 percent of the cost of technical assistance not be automatic. Firms applying for adjustment assistance would be expected to share the cost to the extent possible. Indeed, it is not intended that the Government would be required to bear the costs of technical assistance.

## FINANCIAL ASSISTANCE

(Sections 254-257)

The terms and conditions under which financial assistance may be provided by the Secretary of Commerce, while retaining all reasonably necessary safeguards to insure against monetary losses to the Government as lender or guarantor, have been defined broadly enough to meet the range of situation patterns which are apt to be encountered and to exclude some of the unnecessarily restrictive language of present law. For example, the present law states that financial assistance for working capital would be supplied only in cases determined by the Secretary to be exceptional. In actual practice it has been found that problems with working capital, the lifeblood of the business enterprise, were more likely to be encountered than most others in the case of firms adversely affected by increasing imports. This circumstance is recognized in the bill by placing working capital on an equal basis with funds for acquisition, construction, expansion of land, plant, buildings, equipment, facilities, and machinery. No exceptional case finding would be necessary.

Direct loans would be employed only to the extent that loan funds, with or without a guarantee, are not available from private sources. Because there have been many instances of delay in processing firm adjustment assistance proposals under present law, the Committee adopted an amendment which would require the Secretary of Commerce to reach his decision on proposals within sixty days.

The Committee wishes to clarify a number of points concerning the certification of adjustment proposals. To approve a firm's adjustment proposal the Secretary must find that it gives "adequate consideration to the interests of the workers of such firm". This expression means adequate consideration under the circumstances in which the firm finds itself at the time of submission of the adjustment proposal, not the circumstances at some distant point in the past, with due recognition given to the necessary actions required to effect the recovery of the firm. It might be added that the worker's consideration test precludes using adjustment assistance to relocate any manufacturing facility abroad. A firm's adjustment proposal must also demonstrate that the firm will make all reasonable efforts to use its own resources for economic development. The term, "its own resources," is intended not only to refer to the resources of the individual applicant but may include the total resources available from all affiliated firms or related entities under the ownership and control of substantially the same persons, and that, under certain circumstances, as in the case of a closely held corporation, the term may be reasonably construed to extend to the personal resources of shareholders.

Under present law this bill would authorize financial assistance for working capital purposes. The Committee would point out that working capital loans or loan guarantees may be made independently of whether financial assistance is extended for other purposes. Depending on the circumstances, adjustment proposals may be certified which provide only for working capital loans or guarantees of loans.

It is the Committee's expectation, recognizing the practical difficulties involved, that the Department of Commerce will lay more stress than it has in the past on adjusting firms out of their current line of manufacture and into more profitable lines of activity when applicants are in an industry which shows a pattern of secular decline and where the Department anticipates a continued decline in that industry.

#### OTHER PROVISIONS

(Sections 258-264)

Other procedures and conditions applicable to the administration of financial assistance do not materially differ from those prescribed by present law.

The sections on protective provisions, penalties, law suits, definitions, and authority to prescribe regulations are counterparts of similar sections appearing in present law.

Section 263 of the bill contains provisions for dealing with adjustment assistance cases under consideration at the time of passage of the bill.

Firms whose petitions are under consideration by the Commission under the provisions of the Trade Expansion Act when the bill becomes law must reapply to the Secretary of Commerce under the provisions of the new law. In order to assist the Secretary and expedite his consideration of such cases, the Commission is directed to make available to the Secretary, on request, data it has acquired with respect to its investigation.

If, on the date of enactment, the Commission has completed its investigation and issued a report containing an affirmative finding, or a report where an equal number of Commissioners are evenly divided, the Secretary may certify the firm as eligible to apply for adjustment assistance without conducting a further investigation.

Finally, firms which have already been certified as eligible to apply for adjustment assistance and which have either not yet applied for adjustment assistance or have applied and are in the process of developing their adjustment proposals will be treated under the provisions of the new law. Thus, for example, the limits on the total amount of financial assistance which a firm can receive would apply to such firms. Those firms which have already had their adjustment proposals approved by the date of enactment, however, would be able to receive assistance at the levels provided in such proposals. This latter provision would allow the Secretary to furnish the assistance at the level promised when he approved the proposal.

Section 264 sets up procedures to activate accelerated fact-finding, review, and evaluation of basic conditions in industries which clearly are or may be confronted with import-impact problems. As soon as the Commission begins an industry investigation under section 201,

the Secretary of Commerce will be notified and will begin immediately to assemble facts concerning the industry, including the identification of firms which may be affected. He will also consider the availability of existing programs and their adaptability to meet problems associated with the facilitation of orderly adjustment measures.

The Secretary will submit a report concerning this study to the President within 15 days after the submission of the report of the Commission concerning the subject industry. The Secretary's report will be published and a summary published in the Federal Register.

It is also provided that, whenever an affirmative finding of injury or threat thereof to an industry is made by the Commission, the Secretary shall take steps to inform the individual firms in that industry about available programs and facilities to assist in orderly adjustment to import competition, and to provide help in the preparation and processing of necessary applications and petitions.

As a result of the relaxation in the eligibility criteria, it is hoped that the Department of Commerce will find that the typical applicant for assistance under the Trade Reform Act will not be as financially weak as the typical applicant under present law. Nonetheless, this Committee recognizes that the adjustment assistance loan program will deal with firms that have been weakened by import competition. In this regard the term "reasonable assurance of repayment," which refers to both direct and guaranteed loans, should not be taken to mean reasonable assurance of repayment in the strict banking or commercial sense because adjustment assistance loans are admittedly high risk loans. Further, while collateral or other security is not required under the statute, and while repayment ability should primarily be based on earnings projections, the nature and value of collateral or other security available to secure the loan will have a bearing on whether reasonable assurance of repayment is found to exist.

This Committee, in conformity with its decision on the adjustment assistance program for workers, has adopted an amendment to set a termination date for assistance to firms of September 30, 1980, and has authorized a review by the General Accounting Office of operations under the program of firm assistance and to report its findings to Congress by January 30, 1979. The Committee has also adopted a number of technical amendments which would have the effect of conforming lending terms to those of other Federal lending programs and clarifying various authorities.

Finally, the Committee intends that the adjustment assistance program for firms should be coordinated with the other interested agencies of the Government through the Adjustment Assistance Coordinating Committee established by the bill, and especially with the community adjustment assistance program established by chapter 4.





## CHAPTER 4. ADJUSTMENT ASSISTANCE FOR COMMUNITIES

(Sections 271-284)

In a major addition to the adjustment assistance provisions of the House bill, the Committee bill would create a new program of assistance for communities adversely affected by import competition. The Committee's decision is founded upon its realization that the economic dislocation which may accompany increased imports frequently falls heaviest upon particular communities or geographic regions. Certain industries, which may be highly labor intensive, may account for a substantial portion of employment within a community. The economies of entire communities may be overwhelmingly dependent upon the vitality of a single line of commerce. Sudden and sharp increases in imports of an article can quickly erode the economic base of a community. Such injury can be incurred with little or no warning, leaving local leaders bewildered and local economies depressed. In the case of small communities, the normal process of economic adjustment may be frustrated and made more difficult by the absence of a diversified economy and the lack of alternative channels of employment and production. A company may abruptly close a plant and move its production abroad, leaving hundreds or even thousands of unemployed workers in its wake.

A fundamental assumption of the present worker program has been that workers possess a high degree of mobility. While the displaced shoemaker of New England may in an economic treatise become the computer programmer of the Southwest, experience has shown such mobility among persons with widely different training and experience is rarely the case in reality. Relocation allowances, a key part of the present adjustment assistance program, have seldom been paid. The low utilization may partly be explained by the strict qualifying requirements applicable after a worker has been certified. While the precise number of workers qualifying for relocation allowances is not readily available, the Department of Labor estimates that a maximum of 150 workers—only 0.3 percent of some 45,000 certified—have received relocation benefits under the present program. Factors also cited as restraining mobility include worker age (older workers are less mobile than younger workers) and the proportion of women in the labor force (women are generally less mobile than men). Whatever the cause, the fact is that trade-impacted workers are not as mobile as previously believed; instead of relocating to take advantage of new job opportunities, they more often continue as residents of depressed areas from which most industry has disappeared.

While an unemployed worker in the metropolitan area can often find other job opportunities without relocating, the unemployed worker in a small city, town, or rural area is not so fortunate. His job opportunities are fewer—perhaps only one or two major employers are in

his area—and a single plant closing, besides directly affecting the worker involved, has indirect adverse consequences which can spread throughout a community's entire economy. The Executive Branch estimates there are approximately 400 areas in the United States which are experiencing chronic unemployment and low income levels for various reasons. Although no accurate means of forecast is available, future import concessions may add to that list.

For these reasons, the Committee bill would create a new program of assistance directed at cushioning the shock and aiding the adjustment of communities adversely affected by increased imports. The program is aimed at creating new job opportunities by bringing in new industries into a trade-impacted community. The Committee believes that worker adjustment assistance, which under the present program has been primarily a matter of higher unemployment compensation benefits than would otherwise be paid to an unemployed person, is no substitute for a positive program aimed at restoring the economic viability of depressed communities. What is needed, the Committee is convinced, is a new program capable of stimulating and attracting new investment and job opportunities to regions hard hit by increased imports. The Committee's amendment would create such a program.

The Federal Government, it should be noted, is not without experience in administering community adjustment assistance programs. Two examples of successful Federal programs which are frequently cited are the Federal assistance which followed the closing of the Studebaker plant in South Bend, Indiana, in December, 1963, and the continuing assistance of the Defense Department's Office of Economic Adjustment to communities impacted by defense curtailments. The principal Federal resources utilized in both cases were the experience and technical expertise of Federal agencies. A similar approach could provide technical and financial assistance to communities impacted by increased imports. The object of such a program would be to focus Federal resources on the task of attracting new industry to trade-impacted areas.

#### ELIGIBILITY CRITERIA

##### (Section 271)

Under the amendment adopted by the Committee, local communities would be certified as eligible to apply for adjustment assistance by the Secretary of Commerce. Petitions would be filed with the Secretary by a unit of local government (defined as a political subdivision of a state), by a group of such communities, or by the Governor of a state acting in behalf of such community or communities ("communities" would include Indian tribes). Upon receiving such a petition, the Secretary would be required to publish notice in the Federal Register that he has received the petition and initiated an investigation. If the petitioners or any other party interested in the proceedings submit a request for a public hearing, the Secretary would be required to provide an opportunity for the parties to be heard. A local government agency would be certified as eligible to apply for adjustment assistance if the Secretary determines:

(1) that a significant number or proportion of the workers in a trade-impacted area in which such community is located have become totally or partially separated or are threatened to become totally or partially separated,

(2) that sales or production or both of firms or subdivisions of firms located within the area have decreased absolutely, and

(3) that absolute increases of imports of articles like or directly competitive with articles produced by firms located within the trade-impacted area (or that the transfer of firms formerly located in such area to foreign countries) have contributed importantly to the unemployment and decline in sales or production described in paragraphs (1) and (2).

The term "contributed importantly" as used in paragraph (3) above is intended by the Committee to mean a cause which is important but not necessarily more important than any other cause. The Committee recognizes the difficulties which will accompany an attempt to provide assistance to workers, firms, or communities using a uniform injury test and criteria of eligibility. It is intended that the Secretary of Commerce (in the case of firm and community assistance) and the Secretary of Labor (in the case of worker assistance) shall be given flexibility in making determinations of eligibility while at the same time making every effort to preserve as nearly as possible uniformity in the interpretation of eligibility standards. Accordingly, the terms "significant number or proportion" and "decreased absolutely" are to be given, as nearly as possible, the same interpretation and content in the community program as they are in the worker and firm programs. In addition, it is intended by the Committee that the Secretary of Commerce shall have broad discretion in determining the boundaries of "trade-impacted areas", for it is recognized that community adjustment assistance is a unique program and that local situations are likely to vary considerably from case to case. To the extent that they are relevant, the Secretary would be directed to consider the factors specified as criteria for re-development areas under the Public Works and Economic Development Act of 1965 (EDA). Thus, assistance could be made available to eligible communities within the United States as well as other areas within the U.S. customs area.

As soon as possible after he receives a petition, but not more than 60 days later, the Secretary would be required to reach his determination on the merits of the petition. If his finding is affirmative, the Secretary would issue a certification of eligibility to apply for assistance which would cover any community located within the trade-impacted area in which the petitioner is located and which meets such requirements.

## TRADE IMPACTED AREA COUNCILS

### (Section 272)

Within 60 days after an affirmative determination, the Secretary would send representatives to the impacted area to meet with local officials. (If the area is already eligible for assistance under the Economic Development Act, the Secretary's representatives would work

with the local EDA council to determine what additional benefits may be available or appropriate for the community.) If the area has not previously qualified for assistance, the Secretary's representatives would meet with local officials to: (a) acquaint them with the benefits under the program, (b) assist in formation of Adjustment Assistance Councils, and (c) provide whatever other assistance may be available.

The Secretary would be directed to establish a Trade Impacted Area Council for Adjustment Assistance for each area in which one or more trade-impacted communities are located. The Council would be charged with developing a proposal to bring about the economic rejuvenation of communities within the area and with coordinating community action under the adjustment assistance plan approved by the Secretary of Commerce. The Council would include representatives of certified communities, industry, labor, and general public located within the trade impacted area. If the Secretary finds that an appropriate committee or council already exists within the area, he could designate it to serve as the trade adjustment assistance council. Upon application by the Council, the Secretary would be authorized to make grants to the Council to maintain a moderate professional and clerical staff for a period of two years. The Council and its staff would be charged with developing a comprehensive adjustment assistance plan, tailored to local needs, and submitting the proposal to the Secretary along with an application for assistance.

#### PROGRAM BENEFITS

##### (Section 273)

Adjustment assistance for communities, under the Committee's amendment, would fall into two basic categories: (1) All forms of assistance provided under the Public Works and Economic Development Act of 1965, as amended (thus the Committee has incorporated by reference the programs of the Economic Development Administration of the Department of Commerce), and (2) the loan guarantee program described below.

It is anticipated that benefits for trade-impacted areas which are already certified as eligible for benefits under the Public Works and Development Act of 1965, would be coordinated with program benefits under this provision. The Secretary of Commerce would be authorized to extend loan guarantees to private borrowers by private lending institutions for qualified projects within the trade-impacted area. This loan guarantee would be made subject to the same terms and conditions as loan guarantees are subject to under the Public Works and Economic Development Act of 1965, except that no loan guarantees may be made: (1) unless a joint liability requirement is fulfilled, and (2) in the case of a corporation, unless an employee's stock ownership program is established. No new loan guarantee could be made under the program after September 30, 1980. Loan guarantees could be made for the entire amount of the outstanding unpaid balance of qualified loans. An overall requirement that no more than 20 percent of the amount of the loan guarantees may be made in a single state would be imposed.

## LOAN GUARANTEES

## (Section 273(d))

The Committee bill creates a new loan guarantee program to broaden the availability of funds for job development by attracting new capital to trade-impacted communities. The purpose of this provision is to encourage new investment which is likely to contribute over the long term to employment opportunities within the affected areas.

The new loan guarantee program is designed to involve States and localities in the decision-making process affecting them. Under the Committee bill, no loan guarantee could be made unless (a) the Governor of the State, or (b) the authorized representative of the community, or (c) the Governor of the state and the authorized representative of the community sign a commitment to the Secretary of Commerce pledging such portion of the state and/or local government's entitlement for one entitlement period under the State and Local Fiscal Assistance Act of 1972 as equals one-half the amount of any liability arising under the loan guarantee. In other words, in order for the Secretary of Commerce to extend a loan guarantee to a qualified applicant, a representative of a local government and/or the Governor of the state must pledge so much of a future entitlement under the general revenue sharing program as is necessary to cover one-half of any deficiency which may arise. The Committee feels that those local units of government which share in special Federal benefit programs should bear some responsibility for assuring the money will be wisely spent. In the case of smaller communities, no state or community may pledge for loan guarantees any amount which exceeds that state's or local community's entitlement under the Revenue Sharing Act during the previous year. In the event of a deficiency on a loan guarantee, the Secretary of Commerce would be required to certify to the Secretary of Treasury the circumstances of the deficiency and the amount by which that state's or community's entitlement should be reduced. An amount equal to the reduction in the entitlement would be transferred from the revenue sharing trust fund to the general fund of the Treasury. The remaining 50 percent of the deficiency would be satisfied out of the general revenues of the Treasury. With the approval of the Secretary of Commerce, states may establish alternative programs for fulfilling their responsibilities under the loan guarantee program.

*Use of Employee Stock Ownership Plans for Financing New and Expanded Capital Formation.*—Section 273(f) of the bill requires that 25 percent of the loan guaranteed under the Section 273(d) assistance program be financed through employee stock ownership plans, a technique of corporate finance that has been authorized by Congress recently both in pension reform legislation and the railroad reorganization legislation.

Paragraph (1) would require that 25% of any loan made to a corporation to provide firm adjustment assistance be made to a qualified trust established under an employee stock ownership plan. Repayment of such loans would be guaranteed by the firm receiving such assistance as well as by participating governmental units.

Paragraph (2) would require that proceeds of such loans be used by qualified trusts for the purchase of employer securities and that

annual employer contributions be utilized to pay off the outstanding balance on these loans. It also would require that employer securities, where they are paid for, be allocated to the individual accounts of plan participants.

Paragraph (3) would impose specific requirements which employee stock ownership trusts must meet. The agreement establishing the rights and obligations of the employer maintaining the qualified trust, the lender, and the qualified trust must be unconditionally enforceable by all parties to the agreement. The qualified trust is not to be required to make loan repayments in excess of the amount of required contributions made by the employer and actually received by the trust. This section would also require that funds transferred by the qualified trust for the acquisition of employer securities would be used for the same qualified purposes as are such other sums which are made available in the form of direct loans to the firm qualifying for such assistance.

In addition, the equity capital of a corporation receiving payment for its securities from a qualified trust may not be reduced for the one year period beginning on the date of such purchase to insure that such funds are used solely for expansion purposes rather than for refinancing existing debt obligations. (The Committee has made the employee stock ownership provision a part of its assistance program to provide additional funds for current productive capital assets and intends that no part of these funds should be "leaked" from the company to redeem its securities.) Finally, a corporation would be required to make such contributions to the qualified trust as are necessary for the repayment of the loan made to the trust for the acquisition of employer securities, whether or not the corporation may deduct such contributions for Federal income tax purposes and regardless of any other amounts that the corporation is obligated to contribute under any employee stock ownership plan in effect. The Committee understands and intends that the employee benefits under such a plan are not to be used as a "trade off" for other existing employee benefits or rights.

Paragraph (4) would require that there shall be allocated to the accounts of participating employees their share of the employer securities which were purchased during the year. All employer securities allocated to the account of a participant during one plan year must reflect the pro rata share due that participant. This allocation is based on the annual rate of compensation for that participant compared to total compensation paid all participants during that year. One consequence is that, at least with securities, the plan is not to be integrated with social security. Of course, such integration is not then to be accomplished indirectly. (For example, it is not to be accomplished by what would otherwise be excessive integration reductions of other contributions to rank-and-file employees' accounts.)

It is to be noted that the anti-discrimination rules of section 401 (a)(4) of the Code otherwise continue to apply to these plans. In order to avoid discriminating in favor of shareholders, officers, or highly compensated persons to the detriment of rank-and-file employees it may be necessary to allocate the qualified employer securities in accordance with total payments by the trust, or in some other manner that results in allocations sooner than if they were made in accordance with amortization of the loan to the trust.

Paragraph (5) contains the following definitions:

(A) "Employee stock ownership plan" means a technique of corporate finance that utilizes stock bonus plans or stock bonus plans coupled with money purchase plans qualified under section 401 of the Internal Revenue Code of 1954 which is designed to invest primarily in qualifying employer securities and which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(B) "Qualified trust" means a trust established under an employee stock ownership plan which meets the applicable requirements of the Internal Revenue Code.

(C) "Qualified employer securities" means common stock issued by a corporation receiving firm adjustment assistance under this Act or by a parent or subsidiary of that corporation which has the same voting power and dividend rights as that of other common stock issued by the recipient corporation but only if that voting power may be exercised by the participants in the employee stock ownership plan after allocation of such common stock to their plan accounts.

(D) "Equity capital" means in the case of a corporation receiving firm adjustment assistance the amount of its pre-existing invested capital and tangible assets (equal to the adjusted basis of such property exclusive of depreciation on such pre-existing property during the year in which qualified employer securities are purchased by the trust) less the amount of that corporation's pre-existing liabilities.

As defined in this bill, an "employee stock ownership plan" is a technique of corporate finance which utilizes a stock bonus plan which is qualified, or a stock bonus and a money purchase pension plan both of which are qualified, under section 401 of the Internal Revenue Code of 1954, and which is designed to invest primarily in qualifying employer securities. The employee stock ownership plan and the qualified trust forming a part of the plan must also be designed: (i) to meet general financing requirements of the corporation, including capital growth and transfers in the ownership of corporate stock; (ii) to build into employees beneficial ownership of stock of their employer or its affiliated corporations, substantially in proportion to their relative incomes, without requiring any cash outlay, any reduction in pay or other employee benefits, or the surrender of any other rights on the part of such employees; and (iii) to receive loans or other forms of credit to acquire stock of the employer corporation or its affiliated corporations, with such loans and credit secured primarily by a legally binding commitment by the employer to make future payments to the trust in amounts sufficient to enable such loans to be repaid.

If the full \$1 billion in loans are made under the guarantee program, the channeling of 25% of Federally guaranteed loans for industrial development under this program will result in \$250 million worth of newly issued corporate stock being allocated to employees of companies receiving the loans. This represents one-quarter of the value of the new facilities, equipment, and other productive assets to be acquired by companies as a result of loans under the program. This supplementary form of employee benefit will place each worker in a position where his own efforts toward cost minimization and increased production will directly influence the value of the capital estate which he acquires during his working lifetime.



In recognizing the critical role that our financial system must play in pumping new sources of investment credit into areas suffering from international trade forces over which they have little or no control, the Committee has provided an attractive incentive to potential lenders in the form of loan guarantees not available under conventional finance. In turn, this could generate \$1 billion of new income-producing assets in companies that establish or expand their facilities in these areas. Expanded productivity and expanded capital formation go naturally hand-in-hand. New and more efficient tools of production are main ingredients of any well-conceived strategy to encourage economic growth and revitalization and for the expansion of unsubsidized private sector payrolls within enterprises that can meet the challenge of fair world competition.

This Committee, while anxious to help create the vast amounts of new capital formation which we need within our corporate sector today, cannot ignore the central issue of who will own that capital and share in its profits.

The key to corporate ownership is access to corporate credit. Credit is generally available to well-managed corporations for investing under conditions where the investment is expected to pay for itself. The effect of this policy, however, has been to deny access to more fair and more effective participation in corporate ownership among middle-income and low-income American workers.

Over 95 percent of investment finance is based on either the reinvestment of current profits or borrowings repaid with future profits; only a tiny fraction is based on the sale of new equities for cash to the small segment of the public who can afford such a cash transaction. But conventional techniques of investment finance are expanding the productive power of U.S. corporations by annual increments of over \$100 billion of newly fabricated capital formation. Some industry spokesmen are projecting U.S. capital needs over the next decade at \$4.5 trillion. If industry continues to rely almost exclusively on conventional methods of finance, we may achieve that estimate, but we will create virtually no new capital owners in the process.

Qualitative studies of the U.S. capital ownership base show that almost 100 percent of privately owned U.S. capital assets are concentrated in less than 10 percent of U.S. households. Although 30 million Americans own at least one share of corporate stock, the top 1 percent of U.S. wealthholders own over 50 percent of all U.S. corporate stock. Few workers, including most corporate executives, own capital of any appreciable income significance. Hence, few working Americans have any effective means of participating as stockholder-constituents of our free enterprise system, even in the corporations for which they work. A removal of any institutional barriers between capital owners and workers, if accomplished wholly within the principles of private property and free market economics, could only strengthen our national well-being and our capacity to remain competitive in world trade.

Employee stock ownership plans make it possible for workers in the private sector of our economy to share in the ownership of corporate capital without re-distributing the property or profits from existing assets belonging to existing stockholders.

Since its first application as a financing tool in 1957, employee stock ownership plans have been implemented by a growing number of successful U.S. corporations. Through the vehicle of a specially designed tax-exempt trust, this method of finance offers corporations certain tax incentives and cost reductions not available under conventional methods of corporate finance. The employee stock ownership plan also allows workers to accumulate significant holdings of capital in a tax-free manner during their working careers, while being taxed only on second incomes received in the form of dividend checks or on their assets when removed from their trust accounts.

By offering special economic incentives to lenders and businesses under the loan guarantee program, the Committee feels that this legislation offers a favorable opportunity to further encourage the more widespread use of employee stock ownership plans as a practical means of meeting other long-range objectives of the Nation's foreign trade policies. It is vital that the benefits of this legislation be spread to the widest possible base of working Americans. Hence, in addition to the pay and normal fringe benefits that a worker receives, this bill will also provide him a portion of the ownership of the new assets that his employer will acquire under the loan guarantee program, as represented by newly issued company stock that will be allocated to his account in the trust as the trust's debt is repaid.

The most important aspects of the plan are:

The loan is made not directly to the corporation, but to a specially designed trust that qualifies as a tax-exempt employee stock bonus trust, or a stock bonus and a money purchase pension trust both of which are qualified, under section 401 of the Internal Revenue Code. Such trusts normally cover all employees of the corporation and their relative interests are proportional to their relative annual compensation, however defined, over the period of years that the financing is being paid off. The trusts are normally under the control of a committee appointed by management and its membership may include representatives of the employees. Voting power on stock held in the trust that is acquired under this Act must be passed through the trust to employees as the stock is paid for.

This committee invests the proceeds of the loan in the corporation by purchasing newly issued common stock at its current fair market value. The trust gives its note to the lender, which note may or may not be secured by a pledge of the stock. If it is so secured, the pledge is designed for release of proportionate amounts of the stock each year as installment payments are made on the trust's note to the lender and the released stock is allocated to the participants' accounts.

The corporation issues its guarantee to the lender assuring that it will make periodic payments into the trust sufficient to enable the trust to amortize its debt to the lender. Within limits specified by the Internal Revenue Code—15 percent of covered payroll for a stock bonus trust and an additional 10 percent if a money purchase pension trust of the design of an employee stock ownership plan is added—such payments are deductible by the corporation as payments to a qualified trust.

Thus the lender would have the general credit of the corporation to support repayment of the loan, plus the added security resulting from

the fact that the loan is repayable in pre-tax dollars. In contrast, it should be noted that under conventional financing the repayment of principal is always in after-tax dollars. For loans guaranteed under the program, the lender would, of course, also be secured by the Department of Commerce. Under the program, employee contributions to the trust would be wholly voluntary and employee participants may not be held personally liable on any debts of the trust. Furthermore, under the program the trust's liability on any Federally guaranteed debt may not exceed the recipient corporation's payments to the trust under the loan agreement.

Periodically, as payment is made by the corporation into the trust, there is allocated proportionately among the accounts of the participants in the trust a number of shares of stock proportionate to each participant's relative compensation from the corporation, representing that year's proportionate repayment of debt, principal and interest. Special formulas have been designed to counteract the relatively high proportion of early amortization payments used to pay interest and the relatively high proportion of later payments used to pay principal.

As each particular financing is completed and the loan paid off, the beneficial ownership of the stock representing that financing accrues to the employees and is allocated proportionately to the individual accounts of each participant in the plan.

Most trusts are designed to permit the withdrawal of the portfolio in kind, subject to vesting provisions, either at termination of employment or at retirement. Merchandisers of such plans often design them so that any dividend income on shares of stock that have been paid for by the financing process and are thus allocated to the employees' accounts, are distributed currently by the trust to the employee-participants, thus giving these employees a second source of income to supplement their paychecks.

The Committee considers the employee stock ownership plans an innovative technique of finance which could have important benefits for labor, management and the economy of the United States.

## COMMUNITY ADJUSTMENT ASSISTANCE FUND

### (Section 274)

The Committee bill establishes on the books of the Treasury a revolving fund to be known as the Community Adjustment Assistance Fund. The bill would authorize to be appropriated to the Fund for the general purpose of community adjustment assistance the amount of \$100 million for the fiscal year ending September 30, 1975, and such sums as may be necessary for the succeeding five fiscal years. In addition, the bill provides that at no time shall the Federal share of loan guarantees on loans outstanding exceed \$500 million. It is the Committee's intention that the Community Adjustment Assistance Program shall expire on September 30, 1980, simultaneously with the worker and firm adjustment assistance provisions of the legislation.

## CHAPTER 5. MISCELLANEOUS PROVISIONS

### GAO REPORT

(Section 280)

The Committee bill provides for a study by the General Accounting Office of worker, firm and community adjustment assistance to be completed no later than January 30, 1979, 20 months prior to the expiration of the programs. The report would include an evaluation of the effectiveness of the three programs in aiding workers, firms and communities in their adjustment to changed economic conditions arising from changes in the patterns of international trade and the coordination and effectiveness of other Government programs providing unemployment compensation and relief to depressed areas.

In the case of the worker program specific issues which, among others, should be examined include: the amount of time elapsing between a worker's unemployment and the date on which he first receives the additional benefits available under the bill; the extent to which benefits under the bill are paid retroactively and, in particular, the extent to which they may be paid after the affected workers have become reemployed; the characteristics of workers benefitting from the trade adjustment assistance program and how such workers differ from other unemployed workers in the same areas; employment opportunities in the areas in which workers become eligible for trade adjustment benefits; the extent of difference in the reemployment rate of workers eligible for trade adjustment benefits as compared with workers of similar characteristics who are eligible only for regular unemployment benefits; and the extent to which workers in different age groups continue to be unemployed beyond the exhaustion of their trade adjustment benefits.

The Comptroller General in conducting the study would be directed to the extent practicable to avail himself of the assistance of the Departments of Labor and Commerce. The Secretaries of Labor and Commerce for their part are directed to cooperate with the Comptroller General in the evaluation of the programs. In particular, the Committee directs the Secretary of Labor to consult with the Comptroller General in establishing an information system for the worker adjustment assistance program which will provide the data which the GAO will need for this study.

### ADJUSTMENT ASSISTANCE COORDINATING COMMITTEE

(Section 281)

In addition, the Committee intends that the community adjustment assistance program be closely coordinated with the worker and firms programs through the instrumentality of an Adjustment Assistance Coordinating Committee established under Section 281.

## TRADE STATISTICS MONITORING SYSTEM

## (Section 282)

The Secretaries of Labor and Commerce would be directed to establish a program to monitor imports into the United States and which would be capable of signaling changes in the volume of imports, the relation, if any, of such imports to changes in domestic production, changes in employment within relevant domestic industries, and the domestic industries, and the degree, if any, to which such changes in production and employment are concentrated in specific geographic regions of the United States. It is the Committee's intention that this information shall be reported to the Adjustment Assistance Coordinating Council and published by the Departments of Commerce and Labor on a regular basis for the purpose of keeping the public informed of abrupt changes of imports, domestic production and employment patterns.

## FIRMS RELOCATING IN FOREIGN COUNTRIES

## (Section 283)

Finally, in recognition of the responsibility of major corporations to local communities, the Committee bill declares the responsibility of corporations or firms moving productive facilities from the U.S. to foreign countries to:

- (1) provide advanced notice of the corporation or firm's intention to those employees likely to become unemployed as a result of the move, at least 60 days prior to the date of such move,
- (2) provide similar notices of the move to the Secretaries of Labor and Commerce,
- (3) apply and utilize all adjustment assistance to which the firm might be eligible,
- (4) offer alternative employment opportunities within the United States, if any exists, to employees who are likely to become unemployed as a result of the move,
- (5) assist employees in relocating to other locations within the United States where employment opportunities exist.

## EFFECTIVE DATE

## (Section 284)

As is the case with worker and firm adjustment assistance, the Committee amendment provides that the Community Adjustment Assistance program would enter into effect 90 days after the date of enactment of the bill.

### **Title III.—Relief From Unfair Practices**

Whereas Title II of the bill provides relief from injury to industries, firms, workers and communities caused by "fair" albeit injurious competition, Title III deals with "unfair" and "illegal" trade practices adversely affecting U.S. commerce.

#### **CHAPTER 1. FOREIGN IMPORT RESTRICTIONS AND EXPORT SUBSIDIES**

(Sections 301-302)

Under Section 301 the President would be given broad authority to retaliate against both "unreasonable" as well as "unjustifiable" import restrictions which affect U.S. commerce. In section 301 "unjustifiable" refers to restrictions which are illegal under international law or inconsistent with international obligations. "Unreasonable" refers to restrictions which are not necessarily illegal but which nullify or impair benefits accruing to the United States under trade agreements or which otherwise discriminate against or burden U.S. commerce.

Under section 301(a) of the Committee bill whenever the President determines that a foreign country or instrumentality:

- (1) maintains unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made to the United States or which burden, restrict, or discriminate against U.S. commerce;

- (2) engages in discriminatory or other acts or policies which are unjustifiable or unreasonable and which burden or restrict U.S. commerce;

- (3) provides subsidies (or other incentives having the effect of subsidies) on its exports of one or more products to the United States or to other foreign markets which have the effect of substantially reducing sales of the competitive U.S. product or products in the United States or in those other foreign markets; or

- (4) imposes unjustifiable or unreasonable restrictions on access to supplies of food, raw materials (including petroleum), or manufactured or semi-manufactured products which burden or restrict U.S. commerce;

he would be directed to take all appropriate steps to obtain the elimination of such restrictions or subsidies and he may—

- (A) suspend, withdraw or prevent the application of, or may refrain from proclaiming benefits of trade agreement concessions; and

- (B) impose duties or other import restrictions on the products of such foreign country or instrumentality and fees or restrictions on the services of such foreign country or instrumentality.

The Committee intends that these powers be exercised vigorously to insure fair and equitable conditions for U.S. commerce. Foreign discrimination against U.S. commerce includes a multitude of practices

such as discriminatory rules of origin, government procurement, licensing systems, quotas, exchange controls, restrictive business practices, discriminatory bilateral agreements, variable levies, border tax adjustment, discriminatory road taxes, horsepower taxes, other taxes which discriminate against imports and many other practices which have been amply documented in studies such as the four volume U.S. Tariff Commission Nontariff Barrier work completed for the Committee on Finance.

Subsidies may also distort trading patterns. They may take a wide range of government and private actions. The principal forms which subsidies may take are generally:

- (a) Explicit cash payments (cash subsidies).
- (b) Implicit payments through a reduction of a specific tax liability (tax subsidies).
- (c) Implicit payments by means of loans at preferential interest rates (credit subsidies).
- (d) Implicit payments through provisions of goods and services at prices or fees below market value (benefit-in-kind subsidies).
- (e) Implicit payments through government purchases of goods and services above market price (purchase subsidies).

Standards—that is, laws, regulations, specifications and other requirements with respect to the properties or the manner, conditions, or circumstances under which products are produced or marketed—may also be highly discriminatory. A classic example of a discriminatory standard involves a European organization called the European Committee for Coordination of Electrical Standardization (CENEL). As this arrangement developed it virtually excluded U.S. products from the European market. According to the Special Trade Representative, the CENEL Agreement affects \$1 billion in U.S. exports. The European Community is expanding its rules-of-origin requirements to cover many more products. If diplomatic efforts and trade negotiations fail to bring about equity and reciprocity for U.S. commerce, the acts and barriers described above should be subject to retaliation.

The Committee does not intend that this “retaliation authority” be a dead letter. Foreign trading partners should know that we are willing to do business with them on a fair and free basis, but if they insist on maintaining unfair advantages, swift and certain retaliation against their commerce will occur. The Committee feels that the authorities contained in this provision will serve as negotiating leverage to eliminate those barriers to, and other distortions of trade which Title I of this bill gives the President broad authority to harmonize, reduce or eliminate on a reciprocal basis. The authority in this section should not be used frivolously or without justification. The Committee feels, however, that there must be a credible threat of retaliation whenever a foreign nation treats the commerce of the United States unfairly.

The Committee adopted two amendments to the provisions in subsection 301(a) of the House bill which emphasize foreign practices against which retaliatory action can be taken. The first of these is subparagraph 301(a)(4) which was added by the Committee to deal with the problem of access to supplies. Given the

extremely harmful effects which the unreasonable or unjustifiable withholding of supplies of essential materials and products have on the U.S. and world economies, the Committee felt very strongly that the President should have express authority under section 301 to take action against countries which withhold supplies of needed materials. The Committee believes that such practices are unreasonable and burden the commerce of the United States (and are therefore within the scope of existing law). However, to make it perfectly clear that the statute covers such situations, the Committee adopted the language in subparagraph (4) of section 301(a) expressly authorizing the President to take retaliatory action against foreign countries or instrumentalities which impose unjustifiable or unreasonable restrictions, including quotas or embargoes, on the export to the United States of food, raw materials (including petroleum), manufactured, or processed products.

In addition, the Committee amended subparagraph 301(a) of the House bill to make it explicit that U.S. commerce includes U.S. services associated with international trade. Trade in goods is only one aspect of international economic relations. The Committee is as concerned about discrimination in other areas of commerce involving American commercial interests as it is in the merchandise trade area. Under the Committee amendment, the President would be authorized to retaliate against countries which discriminate against or impose unjustifiable or unreasonable restrictions on, for example, the U.S. insurance industry, the air transport industry, the banking industry, or the merchant shipping industry. There may well be other "service" industries which are discriminated against or subject to unjustifiable or unreasonable practices and the Committee feels that these would also be covered by the Committee amendment.

To enforce this provision the Committee amended subparagraph 301(b) of the House bill to authorize the President to take retaliatory action against foreign services as well as against foreign goods. Thus, under section 301 as amended by the Committee, the President could take actions against countries which burden or restrict U.S. service industries and in addition could take retaliatory action against the service industries of foreign countries. It is understood by the Committee that such retaliatory action, which could include the imposition of fees or other restrictions on foreign services, would be implemented in coordination with the existing administrative agencies having jurisdiction over the particular service in question.

The Committee supports the new provision adopted by the House which would enable the President to retaliate against countries providing subsidies on its exports to other foreign markets which have the effect of substantially reducing sales of competitive U.S. products in those other foreign markets. In addition, the Committee agreed with the provision in the House bill which would authorize the President to utilize section 301 to counteract foreign subsidies on exports to the U.S. market. However, before any action could be taken under section 301 on subsidies of products to the U.S. market, the following determinations would have to be made:

- (1) the Secretary of the Treasury must determine that the country provides subsidies or other incentives having the effect of a subsidy on its exports to the U.S.,



(2) the U.S. International Trade Commission must find that the subsidized exports have the effect of substantially reducing the sales of competitive products made in the United States, and

(3) the President must find that remedies available under the Antidumping Act and under the countervailing duty law are inadequate to deter the subsidization practices.

Under section 301(b) of the House bill the President would have been required to consider the relationship of any action taken under section 301 to the international obligations of the United States. The Committee on Finance agreed to delete this reference to U.S. international obligations since it felt that retaliation should be against the countries which discriminate against U.S. commerce and not against other countries which do not so discriminate. In addition, the Committee felt that there would be situations, such as in the case of unreasonable foreign import restrictions where the President ought to be able to act or threaten to act under section 301, whether or not such action would be entirely consistent with the General Agreement on Tariffs and Trade. Many GATT articles, such as Article I (MFN principle), Article III (taxes affecting imports), Article XII (balance of payments safeguards), or Article XXIV (regional trade associations) are either inappropriate in today's economic world or are being observed more often in the breach, to the detriment of the United States. Furthermore, the decision-making process under the General Agreement often frustrates the ability of the United States (as well as other contracting parties) to obtain the decisions needed to enable the United States to protect its rights and benefits under the GATT. For this reason, both the House bill and the Committee bill direct the President to seek changes in these GATT articles.

The Committee is not urging that the United States undertake wanton or reckless retaliatory action under section 301 in total disdain of applicable international agreements. However, the Committee felt it was necessary to make it clear that the President could act to protect U.S. economic interests whether or not such action was consistent with the articles of an outmoded international agreement initiated by the Executive 25 years ago and never approved by the Congress.

Under the House bill, the President would have been authorized to act on either a nondiscriminatory (MFN) or selective basis in cases where a country imposed an unjustifiable import restriction, act, policy, or practice. However, in those cases where the particular restriction, act, policy or practice was unreasonable, but not unjustifiable, the President would have been required to act only against the offending country.

The Committee amended the House bill to eliminate this distinction between unjustifiable and unreasonable actions as far as retaliation is concerned. The Committee believed that the President should act only against the country (or countries) which maintains the restriction, act, policy, or practice adversely affecting U.S. commerce, whether it be unjustifiable or unreasonable. The Committee felt that it would be unfair to subject innocent foreign countries to retaliatory actions under section 301, since it is only the offending country(ies) which are to be the "target" of retaliatory measures, or the threat thereof. Thus, while the Committee bill would provide the President with discretion to act on a most-favored-nation (i.e., across-the-board) basis under

section 301, if he deems it appropriate, the determination to act on a broad basis would be subject to a two-House Congressional override procedure.

*Hearing Procedures.*—The Committee felt that in order to make section 301 a truly effective tool for protecting U.S. commerce from burdensome foreign restrictions, individual parties should be able to petition the Government in order to seek recourse against specific foreign actions adversely affecting their interests. This would also expedite the process by which burdensome foreign restrictions can be brought to the attention of the relevant agencies in the U.S. Government. Accordingly, the Committee adopted an amendment which would permit interested parties to file complaints with the Office of the Special Representative for Trade Negotiations, alleging the existence of a particular restriction, act, policy, or practice of the kind referred to in paragraph (a) of section 301. Upon receipt of any such complaint, Special Trade Representatives would be required to conduct a review of the alleged restriction, act, policy, or practice. Upon request by the complainant, such review would also include public hearings. The Committee amendment would authorize the President to issue regulations concerning the conduct of such review and hearings and would also direct the Special Representative to submit a semi-annual report to the House of Representatives and the Senate summarizing the reviews and hearings conducted by it during the preceding six-month period. The Committee made no significant change in subsection 301(d) of the House bill which requires the President, in addition to the specific complaint procedure, to provide an opportunity for the general presentation of views concerning the import restrictions, acts, policies, or practices set out in section 301(a).

Under the House bill, the President would be required to provide an opportunity for the presentation of views, and for public hearing where requested, concerning any proposed retaliatory action before any such action could be taken under section 301. However, there may be instances in which it may be necessary to expedite actions under section 301 in order to protect important U.S. economic interests. In such cases, the holding of hearings could delay the taking of any action under section 301 to the detriment of the U.S. economic interests involved. Accordingly, the Committee amended the House bill to enable the President to take action prior to providing an opportunity for views and public hearings where he determined that such prior hearings would be contrary to the national interest because of the need for expeditious action. However, in any such cases, the President would be required to provide for public hearings after any action was taken under section 301.

#### PROCEDURE FOR CONGRESSIONAL DISAPPROVAL OF CERTAIN ACTIONS TAKEN UNDER SECTION 301

##### (Section 302)

Section 302 of the House bill would establish a procedure for Congressional veto of any actions taken by the President under section 301. The Committee on Finance determined it unnecessary to provide Congressional override of every action taken by the President under

section 301. Such override might impair the ability of the President to utilize section 301 as leverage to gain the elimination of burdensome foreign restrictions on U.S. commerce, on the one hand, while on the other it did not, in the Committee's view, provide an effective mechanism by which to control Presidential actions under 301. However, the Committee did feel that the Congress should exercise a check over the President's authority to retaliate against innocent countries. Thus, under section 302 of the Committee bill, if the President retaliated against innocent as well as offending countries on an MFN basis, the Congress, by a simple majority vote of both Houses within the 90-day period following the date on which notice of the broad retaliatory action was submitted to Congress, could vote to override the President. In such a case, the President's retaliatory action under section 301 would have no force or effect on the day after the adoption of this concurrent resolution of disapproval, except with respect to the country or instrumentality whose restriction, act, policy, or practice was the cause for taking such action.

## CHAPTER 2. AMENDMENTS TO THE ANTIDUMPING ACT, 1921

### (Section 321)

The Committee over the years has sought a more vigorous enforcement of the unfair foreign trade practice statutes, including the Antidumping Act of 1921, which deals with injurious price discrimination. The Treasury Department has, in recent years, made significant efforts to improve its administration of the Antidumping Act. The amendments to that Act contained in the bill are primarily designed to continue, and in fact improve, the effective and vigorous enforcement of this anti-price discrimination statute.

*Time Limits and Procedures.*—Subsection (a) of section 321 would amend section 201(b) of the Antidumping Act to provide that the Secretary of the Treasury or his delegate must, within 6 months, or, in more complicated investigations, within 9 months after initiation of an antidumping investigation determine whether there is reason to believe or suspect that the purchase price of imported merchandise is less, or the exporter's sales price is less, or likely to be less, than the foreign market value or constructed value of the merchandise.

If the Secretary's determination is affirmative, then under paragraph (B) of section 201(b)(1), as amended, he must publish notice thereof in the Federal Register and require the withholding of appraisement of any such merchandise entered or withdrawn from warehouse for consumption on or after such date of publication. Paragraph (B) would also retain the present provision in the Antidumping Act which authorizes the Secretary to order that such withholding of appraisement be made effective with respect to merchandise entered on or after an earlier date, but in no case may the effective date of withholding be earlier than the 120th day before the date of publication of the notice of initiation of the investigation. It would be appropriate to exercise this authority in certain instances such as, for example, if imports increased significantly after the antidumping proceeding notice was published.

Paragraph (C) of section 201(b) would provide that if the Secretary's determination is negative, or if he tentatively determines that the investigation should be discontinued, notice thereof must be published in the Federal Register. Paragraph 201(b)(3) of the House bill included language authorizing the Secretary, within three months after a tentative negative determination, to order the withholding of appraisement if he subsequently has reason to believe that the purchase price or exporters' sales price is less than the foreign market value. The Committee bill deleted this language as being unnecessary in light of the Committee amendment establishing a three-month time limit on final determinations and discontinuances following tentative determinations or discontinuances under the Act (see below).

Under the House bill, the Secretary would have an additional three months in complicated investigations (total of nine months) to make

his preliminary determination under section 201(b) of the Act. The Committee amended paragraph (2) of section 201(b) of the House bill to require that the extra 3 months allowed for more complicated investigations could be utilized only if the Secretary publishes in the Federal Register notice that his determination cannot reasonably be made within 6 months, together with a statement of reasons for such conclusion.

The Committee further amended the House bill in paragraph (3) of section 201(b) to require that a final determination in the form of an affirmative or negative determination of sales at less-than-fair-value, or a final discontinuance of the investigation, shall be made within 3 months after publication of a tentative determination or discontinuance under section 201(b)(1). It was the view of the Committee that the objective of placing statutory time limits on the determinations of the Secretary of the Treasury under the Antidumping Act of 1921 would not have been successfully achieved if the Secretary's final price discrimination determination were not made subject to such limits.

Subsection (a) of section 321 of the Committee bill adds further amendments to the House bill to incorporate into the law in new section 201(c)(1) the existing requirement of Treasury regulations requiring the Secretary to determine, within 30 days after receipt of information alleging that a particular class or kind of merchandise is being or is likely to be sold in the United States at less than its fair value (LTFV) and that an industry in the United States is being or is likely to be injured by such sales, whether to initiate a formal investigation. The Committee recognizes that the Secretary may have to require, through regulations, that the information submitted be in such proper form as to provide a sufficient basis upon which to make a determination as to whether or not an investigation is warranted in each case. However, it is the Committee's intent that the Secretary of the Treasury administer the Act, as amended, and promulgate regulations if necessary, so that he will initiate an investigation within 30 days after a written complaint is made by the complaining party under the Act.

If, after receipt of information alleging price discrimination or "dumping" the Secretary's determination under 201(c)(1) is affirmative, notice of the initiation of such an investigation shall be published in the Federal Register. If the Secretary's determination is negative, the inquiry shall be closed. Although such negative determinations shall not be published, it is the assumption of the Committee that the party presenting the information alleging dumping shall be informed of the discontinuance of the inquiry.

Under the present Act, the Secretary of the Treasury must complete his entire investigation as to sales at less than fair value before the matter can be referred to the International Trade Commission for its injury determination. The Committee felt that there ought to be a procedure for terminating investigations at an earlier stage where there was no reasonable indication that injury or the likelihood of injury could be found. Therefore, the Committee adopted a new provision, section 201(c)(2), which provides for the elimination, at an early stage of the antidumping proceedings, of those cases in which there is no reasonable indication that an industry in the United States

is being or is likely to be injured, or is prevented from being established, by reason of the importation of the merchandise concerned into the United States. The amendment is designed to eliminate unnecessary and costly investigations which are an administrative burden and an impediment to trade. Under the amendment, if the Secretary, in the course of determining whether to initiate an antidumping investigation, concludes that there is substantial doubt as to whether injury under the Act exists, he will forward to the International Trade Commission the reasons for his doubts and any available information and preliminary indications concerning possible sales at less than fair value, including dumping margins and the volume of trade. If the Commission, within 30 days after receipt of such information from the Secretary, determines and advises the Secretary that there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, no further proceedings would be conducted. Otherwise, any investigation then in progress would be continued.

*Equal Hearings Rights.*—Section 321(a) of the Committee bill would amend the proposed section 201(d)(1) of the Antidumping Act which would require the Secretary and the International Trade Commission to conduct hearings prior to any determination under subsection (a).

Under the House bill, the foreign manufacturer or importer would be guaranteed a hearing, whereas the domestic manufacturer must show good cause. This would seem to make the investigative process a single party interest procedure, and appears unfair to domestic producers. Accordingly, the Committee amended new section 201(d)(1) of the Act to extend the right to appear at such hearings to domestic manufacturers, producers and wholesalers of merchandise of the same class or kind, in addition to the parties covered in the House bill. As in the House bill, any other person, firm, or corporation could apply and upon a showing of good cause, could be allowed by the Secretary or the Commission to intervene and appear at such hearings. The Committee further modified this provision in the House bill to provide that such hearings would be required only when requested by an interested party as defined above.

*Complete Statement of Determinations.*—Section 201(c)(2) of the Act, as amended by the House bill, would require the Secretary, upon making his LTFV sales determination, and the Commission, upon making its injury determination under the Act, to publish such determinations in the Federal Register and include a statement of findings and conclusions, and the reasons or bases thereof, on all material issues of fact or law presented. The Committee amended this provision (section 201(d)(2) of the Act under the Committee bill) to require that the statement published be a *complete* statement, and to permit procedures consistent with confidential treatment granted by the Secretary or the Commission. In adding the word "complete" to the bill, the Committee is making clear its intent that sufficient information be provided in the case of each determination to enable all interested parties to be aware of the reasons for, and details of, such determinations and to effectively protect their rights in proceedings before the Department of the Treasury and the Commission, as well as in the courts.

As in the House bill, section 201(d)(3) of the Committee bill would exempt the hearings from the procedural requirements of the Administrative Procedure Act in order to preserve the informal and nonadversary nature of the proceedings. The transcript of any hearing, and all information developed in connection with the investigation, with the exception of material treated as confidential or otherwise exempt from disclosure under the Freedom of Information Act, would be available to all persons.

*Purchase Price.*—Subsection (b) of section 321 of the bill would provide three amendments to section 203 of the Antidumping Act, dealing with purchase price. These House amendments have been adopted without change in the Committee bill. The first amendment would eliminate an anomalous provision dealing with the treatment of export taxes in the computation of purchase price and provides, in accordance with the computation of exporter's sales price (section 204), that such taxes will be subtracted from, rather than added to, purchase price, if included therein, so as to avoid an artificial reduction or elimination of dumping margins that may be present. Since dumping is generally defined to exist when the foreign market value is higher than the purchase price in the United States, increases in the purchase price tend to reduce or eliminate the amount of the dumping margin which might otherwise be found to exist.

The second amendment deals with the treatment of certain types of tax rebates in computing purchase price and would provide that foreign indirect taxes, rebated or remitted upon export of the imported merchandise in question, will be added back to purchase price only if such indirect taxes are imposed directly upon the exported product or its components, and then only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. The present standard for the treatment of such tax rebates or remissions which is now contained in the Act is significantly broader and requires the adding back to the purchase price of a wider range of taxes, to the advantage of the foreign manufacturer, than would be allowed under the proposed amendment. The standard in the proposed amendment parallels that standard employed by the Treasury Department under the countervailing duty law in determining whether tax rebates and remissions constitute bounties or grants. However the Committee, in recommending this amendment, does not express approval or disapproval of that Treasury practice.

The third amendment to section 203 of the Act would assure that imported merchandise benefitting from tax rebates or remissions which the Secretary has already determined to be bounties or grants, and thus subject to countervailing duties, will not be unfairly penalized by subjecting them to antidumping duties as well by reason of the same rebates or remissions.

*Exporter's Sales Price.*—Subsection (c) of section 321 of the Committee bill includes three amendments to section 204 of the Antidumping Act, dealing with exporter's sales price. These three House amendments were also accepted by the Committee without change. The first amendment would codify existing Treasury regulations in providing that imported merchandise for which an exporter's sales price calculation must be made will not escape the purview of the Act by virtue of its being further processed or manufactured subsequent to its importa-

tion but before its sale to the first purchaser in the United States unrelated to the foreign exporter. Under the amendment, adjustments to the price at which the article is ultimately sold to an unrelated purchaser would be made in order to subtract out the value added to the merchandise after importation. The Committee does not intend this provision to apply, however, unless the product ultimately sold to an unrelated purchaser contains a significant amount by quantity or value of the imported product, unless the purpose of the further processing of the merchandise in the United States is on its face to avoid the application of the Antidumping Act.

The second and third amendments to section 204 of the Act are identical to the amendments adopted to section 203 dealing with the treatment of certain tax rebates or remissions in the computation of purchase price, and would apply these same standards to the computation of exporter's sales price.

Subsection (d) would add three amendments to section 205 of the Antidumping Act, dealing with the determination of foreign market value:

*Below Cost Sales.*—The Committee adopted new subsection (b) to section 205, unchanged from the House bill, which would provide for disregarding, in certain situations, sales in the home market of the country of exportation, or, where appropriate, sales to countries other than the United States, if such sales are made at prices which represent less than the cost of production of the merchandise in question. The Committee is concerned that, in the absence of such a provision, sales uniformly made at less than cost of production could escape the purview of the Act, and thereby cause injury to United States industry with impunity.

Under the amendment, whenever the Secretary has reasonable grounds to believe or suspect that sales below cost are being made, he would investigate to determine whether such sales are in fact below cost. If he determines that sales below cost have been made, such sales would be disregarded in determining foreign market value if they 1) have been made over an extended period of time and in substantial quantities; and 2) are determined by the Secretary not to be at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. These standards would not require the disregarding of below-cost sales in every instance, for under normal business practice in both foreign countries and the United States, it is frequently necessary to sell obsolete or end-of-model year merchandise at less than cost. Similarly, certain products, such as commercial aircraft, typically require large research and development costs which could not reasonably be recovered in the first year or two of sales. Thus, infrequent sales at less than cost, or sales at prices which will permit recovery of all costs based upon anticipated sales volume over a reasonable period of time would not be disregarded. However, the practice of systematically selling at prices which will not permit recovery of all costs would be covered by this amendment and such sales would accordingly be disregarded.

When sales are disregarded by virtue of having been made at less than cost, and the remaining sales, not made at less than cost, are inadequate as a basis for comparison, the Secretary would determine that no foreign market value exists and use the constructed value (sec-



tion 206 of the Act) as the basis for comparison with the purchase price or exporters' sales price of the merchandise in question.

*State-Controlled Economy Dumping.*—The second amendment to section 205, to be added as a new subsection (c), also unchanged from the House bill, would adopt, in substance, existing Treasury regulations concerning standards for comparison to be employed in investigations of merchandise imported from State-controlled-economy countries. The Committee is concerned that the technical rules contained in the Act are insufficient to counteract dumping from State-controlled-economy countries where the supply and demand forces do not operate to produce prices, either in the home market or in third countries, which can be relied upon for comparison purposes. Accordingly, the amendments would confirm the existing Treasury practice of comparing the purchase price or exporters' sales price of the merchandise in question with the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either (1) the prices (determined in accordance with sections 202 and 205(a) of the Act) at which such or similar merchandise produced in a non-State-controlled-economy country is sold either for consumption in the home market or to other countries (including the United States), or (2) on the basis of the constructed value of such or similar merchandise in a non-State-controlled-economy country (as determined under section 206 of the Act). The amendment is intended to permit comparison of the purchase price or exporters' sales price of the merchandise in question with the prices of such or similar merchandise produced in the United States in the absence of an adequate basis for comparison using prices in other non-State-controlled-economy countries.

*Multinational Corporation Dumping.*—The Committee adopted a new provision, section 205(d) of the Act, extending the Antidumping Act to cover price discrimination actions by multinational corporations operating in more than one foreign country. The Antidumping Act of 1921, in its present form, cannot be applied to discriminatory pricing by a multinational corporation which sells products made in a plant in one foreign country at low prices to the United States, while the same company or its subsidiary in another foreign country subsidizes those low-priced sales with high-priced sales of the same product to customers in its own market. The factory in the country producing for export (country A) may make insignificant or no sales to its home market. On the other hand, the factories in countries which sell at higher prices (countries B and C) may be primarily engaged in selling to their home market, and the profitability of the overall operation may be largely derived from the home market sales. In such a case, the low-priced export sales are effectively being supported by the higher-priced sales of the affiliated factories in the home market, which is often highly protected from outside competition. This practice is a form of price discrimination which could severely injure domestic producers.

The current Antidumping Act does not cover this practice. Under present law price discrimination ("dumping") occurs when products are sold for export to the United States at less than fair value, or at a price lower than the "foreign market value." Under section 205 of the Antidumping Act, "foreign market value" is measured by one of two alternative criteria:

The first and primary criterion is "the price . . . at which such or similar merchandise is sold, or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption. . . ." In other words, where merchandise manufactured in country A is allegedly being exported to the United States at less than-fair value prices, the present law looks first to the prices at which such merchandise is sold in country A. However, in the situation described above, there are little or no home market sales being made.

The second criterion covers situations where there are no (or insufficient) home market sales, as is the case in the situation described above. In that situation, section 205 of the Act looks to "the price at which [such or similar merchandise is] so sold or offered for sale for exportation to countries other than the United States." In other words, the second or alternative criterion is the price at which such merchandise is exported from country A to countries other than the United States. However, as indicated in the situation discussed above, all exports of the merchandise produced in the factory in country A can be sold at uniformly low prices.

The low-priced sales to U.S. customers are supported, not by higher-priced sales from the country A plant, but by higher-priced sales of the same products manufactured in the plants of the company which are located in other countries, B or C. In countries B and C high prices on these products are often maintained by markets protected through rigid nationalistic purchasing or other policies—for example, by restrictions against purchasing foreign-made electrical equipment. Thus, under the second statutory criterion for ascertaining "foreign market value," an illusion of no dumping is produced by comparison of the multinational corporations' prices on exports to the United States with the low prices on its exports to other foreign countries.

Nor can the Antidumping Act be applied effectively to a corporation's multinational operations through the use of "constructed value" as defined in section 205. Under the provisions of section 202, the U.S. price can be compared to "constructed" home market value only "in the absence of" foreign market value. Since the conglomerate exports its country A production to other foreign countries, as well as to the United States, technically there is a "foreign market value." The previously mentioned problem that this measure of foreign market value may create an illusion of no dumping in certain cases occurs because the Antidumping Act does not authorize the Secretary of the Treasury to ignore national boundaries and to look at manufacturing plants in two or more countries to investigate discriminatory pricing by multinational companies.

There is, therefore, a compelling case for amending the Antidumping Act to ensure that it cannot be evaded by a multinational company which practices price discrimination through plants situated in several countries. Accordingly, the Committee adopted (in section 321(d) of the bill) a new section 205(d) which would provide that *whenever, in the course of an investigation under this Act, the Secretary determines that—*

*"(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person,*

*firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;*

*"(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are non-existent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and*

*"(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value, or, if there is no foreign market value, the constructed value, of such or similar merchandise produced in the facilities located in the country of exportation,*

*he may determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in substantial quantities by one or more facilities outside the country of exportation. The Secretary in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such differences are demonstrated to his satisfaction. For the purpose of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the Secretary shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by section 205(a) for the cost of all containers and coverings and all other costs, charges and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation."*

In selecting such prices to form a basis for comparison, the Secretary is provided discretion to select prices of merchandise manufactured in one or more countries other than the exporting country, as long as such or similar merchandise is sold in substantial quantities by each facility selected. It is anticipated that the Secretary will consider, as the basis for comparison, the price of preponderant sales of most of the similar merchandise, or, if no preponderant sales exist, a weighted average of the prices at which substantial quantities are sold. If sales in one country which does not export significant quantities of the merchandise in question to the United States were substantially greater than the sales in a second such country, the Secretary should use the sales in the former country, particularly if the prices in that country were substantially higher, since it would appear that such sales were the primary source of subsidization of sales to the United States at unfair prices. In making his determination, the Secretary would make appropriate adjustments for any differences in the cost of producing the merchandise (including taxes, labor, materials, and overhead) in facilities in the country of exportation and in the facilities located outside the country of exportation. In addition, all the adjustments presently required or authorized by present law, as amended by this bill in calculating purchase price, exporter's sales price, and foreign market value would be made.

"Foreign market value" in section 205 of the present Act is defined in terms of shipments from the exporting country in question to the

United States. The Committee provision would direct the Secretary to determine foreign market value in the case of sales made in countries other than the exporting country, by reference to the time of shipment and the costs involved in preparing the merchandise for shipment in the country of exportation.

The Committee, aware of the expanded subject matter of the Act as amended in section 205(d) and the many complexities inherent in this new provision, has made the exercise of the authority in this provision discretionary with the Secretary. It is not intended, however, that this discretion on the part of the Secretary will be used to avoid applying section 205(d) in cases which clearly come within the framework and spirit of the Committee's amendment.

*Sales by Producing Company.*—Subsection (e) of section 321 of the Committee bill adopts, unchanged, subsection 321(f) of the House bill. It would amend section 212(3) of the Antidumping Act to provide that companies will be deemed to have sold merchandise to the United States at less than its foreign market value only if their sales to the United States are at prices lower than their own prices in the home market or, as appropriate, to third countries. If no sales, or an insignificant number of sales, are made by the company in both the home market and to third countries, comparison would be made with the constructed value of the merchandise produced by the company in question. Under present law, the Treasury Department is required to resort, for comparison purposes, to sales made by a different company in the home market if the company in question makes no sales, or an insignificant number of sales, of such or similar merchandise in the home market. This produces occasional inequities by subjecting companies to dumping findings when their prices to the U.S. are not lower than their prices in all other markets in which they sell and, further, by rendering them liable to the imposition of dumping duties on the basis of prices which they cannot control and may not even know about. The reverse can also be true and companies may escape liability for dumping duties when—although their prices to third countries, if used as a basis for comparison, would show dumping margins—the Treasury is compelled to use as a comparison basis the home market prices of a different producer which reveals no dumping margins. The amendment will remedy this situation and allow the practices of each producer to stand on their own.

*Customs Invoice Information.*—As subsection (f) of section 321, the Committee has added a new provision, amending section 481 of the Tariff Act of 1930 (19 U.S.C. 1481), which would require that customs invoices submitted with imported merchandise contain, in addition to other information specified therein, information on 1) all rebates, drawbacks, bounties and grants allowed, paid, or bestowed on the exportation, manufacture, or production of the merchandise, and 2) the unit price of each item at which such merchandise is being sold or offered for sale in the home market of the country of exportation. This information would be required to be furnished on any entry for which an invoice is required and which covers merchandise other than articles 1) classifiable in Schedule 8, Tariff Schedules of the United States (19 U.S.C. 1202); 2) imported for personal use and not for resale; or 3) having a purchase price or value under \$1,000. Additionally, the information need not be furnished on each invoice if

the appropriate Customs officer determines that the information required is currently available.

*Equal Judicial Review Rights for Domestic Producers.*—The House bill did not contain a provision permitting domestic manufacturers, producers or wholesalers the right to obtain judicial review of negative antidumping decisions in the U.S. Customs Court. The House report makes references to an informal opinion of the Treasury Department which asserts that existing law provides for judicial review of negative antidumping decisions on the part of the U.S. manufacturers, producers, or wholesalers. The Committee generally agrees with this opinion. However, it is the view of the Committee that since some question remains as to the ability of American manufacturers, producers, and wholesalers to obtain judicial review of negative antidumping determinations under section 516 of the Tariff Act of 1930, the law ought to be explicit on this point. The Committee believes it essential that domestic producers have the right to judicial review of negative price discrimination (LTFV) determinations, just as foreign producers and importers have the right to obtain judicial review of positive price discrimination (LTFV) determinations.

The Committee, therefore, added new subsection (g) of section 321, which would amend section 516 of the Tariff Act of 1930 (19 U.S.C. 1516) and sections 2631 and 2632 of title 28, United States Code, to provide *explicitly* for judicial review of negative antidumping determinations made by the Secretary of the Treasury. Under the amendment, within 30 days after a negative fair value determination by the Secretary, any American manufacturer, producer, or wholesaler of merchandise of the same class or kind as that described in such determination may file with the Secretary a written notice of his desire to contest the decision. The Secretary would then publish notice of the desire to contest the determination and, within 30 days after such publication, the manufacturer, producer, or wholesaler may commence an action in the Customs Court for review of the Secretary's determination. The amendments made to title 28, United States Code, would make specific provision for the hearing of such actions in the Customs Court.

*Transitional Procedure.*—The amendments made in section 321(a) of the Committee bill would apply to all investigations begun on or after the date of enactment of this bill. The amendments to the Antidumping Act made in subsections (b) through (e) of section 321 would apply to all merchandise which is not appraised on or before the date of enactment of the bill. However, these latter amendments would not apply to merchandise which was exported before such date of enactment and which is subject to a finding of dumping, which finding is either outstanding on the date of enactment or revoked, but still applicable to such merchandise. Subsection (f) would apply to all merchandise which is exported on or after the 90th day after the date of the enactment of this bill. Finally, amendments made by section 321(g) would apply with respect to determinations under section 201 of the Antidumping Act resulting from questions of dumping raised or presented on or after the date of the enactment of this bill.

*Certain Concepts and Terms Associated With Antidumping Act Practices.*—The Committee received proposals to include statutory language regarding certain concepts and terms, such as "technical dump-

ing," industry, injury, causation linkages, and reconsideration of agency determinations and findings, embodied in the Antidumping Act. These proposals were not accepted for the reason that the Committee believes the matters involved are adequately treated under existing practices and are best left to individual case determinations without additional statutory guidelines.

(1) *Technical dumping*.—The concept, underlying a number of International Trade (Tariff) Commission determinations, is wholly consistent with the basic philosophy and purpose of the Antidumping Act. This Act is not a "protectionist" statute designed to bar or restrict U.S. imports; rather, it is a statute designed to free U.S. imports from unfair price discrimination practices. As is explained below, this distinction is of importance in the context of recent suggestions that the Antidumping Act should not be applied to imports of articles in short supply.

Conceptually, the Antidumping Act is not directed toward forcing foreign suppliers to sell in the U.S. market at the same prices that they sell at in their home markets. Rather, the Act is primarily concerned with the situation in which the margin of dumping contributes to underselling the U.S. product in the domestic market, resulting in injury or likelihood of injury to a domestic industry. Such injury may be manifested by such indicators as suppression or depression of prices, loss of customers, and penetration of the U.S. market. When clear indication of injury, or likelihood of injury, exists there would be reason for making an affirmative determination. The Antidumping Act is designed to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry.

On the other hand, the Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market price. Such so-called "technical dumping" is not anti-competitive, hence, not unfair; it is procompetitive in effect. The Commission has recognized the concept of technical dumping and in a number of cases has made a negative determination in the circumstances of such dumping. It is to be noted that in the usual short supply situation or inflationary period, imports—regardless of home market price—would normally be sold to the domestic market at a price no lower than the prevailing U.S. market price, thus indicating that when dumping exists in such situations, it is likely to be a case of technical dumping in which there is not likely to be injury to a domestic industry. In other words, importers as prudent businessmen dealing fairly would be interested in maximizing profits by selling at prices as high as the U.S. market would bear. But if there is a margin of dumping in a tight supply situation, it may be due to technical reasons, which would not be injurious to domestic industries.

(2) *Industry*.—The Antidumping Act refers to "an industry in the United States." There are no qualifications as to the kind of industry or the number of industries that might be adversely affected by the less-than-fair-value imports under consideration. Although the Commission's investigations have usually been concerned with an industry consisting of the domestic-producer facilities engaged in the

production of comparable articles (i.e., articles like the imported articles), a number of investigations have been concerned with the domestic facilities engaged in the production of articles which, although unlike the imports, are nevertheless competitive therewith in domestic markets. In any case, the industry is a national industry involving all domestic facilities engaged in the production of the domestic articles involved.

(3) *Injury and causation linkages.*—Under the Antidumping Act, the Commission determines whether a domestic industry “is being or is likely to be injured, or is prevented from being established, by reason of the importation of” the less-than-fair-value imports. The term “injury,” which is unqualified by adjectives such as “material” or “serious,” has been consistently interpreted by the Commission as being that degree of injury which the law will recognize and take into account. Obviously, the law will not recognize trifling, immaterial, insignificant or inconsequential injury. Immaterial injury connotes spiritual injury, which may exist inside of persons not industries. Injury must be a harm which is more than frivolous, inconsequential, insignificant, or immaterial.

Moreover, the law does not contemplate that injury from less-than-fair-value imports be weighed against other factors which may be contributing to injury to an industry. The words “by reason of” express a causation link but do not mean that dumped imports must be a (or the) principal cause, a (or the) major cause, or a (or the) substantial cause of injury caused by all factors contributing to overall injury to an industry.

In short, the Committee does not view injury caused by unfair competition, such as dumping, to require as strong a causation link to imports as would be required for determining the existence of injury under fair trade conditions.

The Commission’s affirmative determinations that an industry “is likely to be injured” by less-than-fair-value imports are based upon evidence showing that the likelihood is real and imminent and not on mere supposition, speculation, or conjecture.

A number of cases before the Commission have been concerned with the question of whether imports of comparable articles from different countries should be considered together or cumulated in making injury determinations. The issue arises in several different contexts, viz: (1) when Treasury determinations involving comparable imports from two or more different countries are simultaneously submitted to the Commission; (2) when Treasury determinations on comparable imports are submitted to the Commission at different times. Under consistent practice, affirmed by the U.S. Customs Court in *City Lumber Co. v. United States* (R.D., 11557, July 9, 1968; 64 Cust. Ct. 826 (1970); 311 F. Supp. 340 (1970); 457 F. 2d 991 (1972)) the Commission has considered the combined impact of less-than-fair-value imports in making injury determinations when the facts and economic considerations so warrant. Such result does not follow as a matter of law; it follows, on a case by case basis, only when the factors and conditions of trade show its relevance to the determination of injury.

A hybrid question relating to injury and industry arises when domestic producers of an article are located regionally and serve regional

markets predominately or exclusively and the less-than-fair-value imports are concentrated in a regional market with resultant injury to the regional domestic producers. A number of cases have involved this consideration, and where the evidence showed injury to the regional producers, the Commission has held the injury to a part of the domestic industry to be injury to the whole domestic industry. The Committee agrees with the geographic segmentation principle in antidumping cases. However, the Committee believes that each case may be unique and does not wish to impose inflexible rules as to whether injury to regional producers always constitutes injury to an industry.

(4) *Review of agency determinations and findings.*—The Antidumping Act does not contain specific provisions for the review by each agency of its individual determinations or of the findings of dumping issued by Treasury. However, both Treasury and the Commission have the authority to review, modify, or revoke their determinations. The Treasury by regulation has long exercised this function, initially and until 1954, with respect to both less-than-fair-value and injury determinations, and after 1954 with respect to its single determination of less-than-fair-value imports. In 1954, the Commission was given the authority to make the injury determinations under the Antidumping Act, and it has continued Treasury's practice as is recently evidenced by its review of several outstanding injury determinations, one of which was an inherent part of an outstanding finding of dumping issued by the Treasury.





CHAPTER 3. AMENDMENTS TO SECTIONS 303 AND 516 OF THE TARIFF  
ACT OF 1930, COUNTERVAILING DUTIES

(Section 331)

Section 331 of the bill would amend the present countervailing duty law. In the past, the administration of the countervailing duty law has been subject to considerable criticism. Although the present statute is, by its terms, mandatory, there is no period stipulated within which the Secretary of the Treasury must make his determination as to whether or not a bounty or grant exists. The Committee has been concerned over the past years that the Treasury Department has used the absence of time limits to stretch out or even shelve countervailing duty investigations for reasons which have nothing to do with the clear and mandatory nature of the countervailing duty law. It now appears that there has been a recent significant improvement in the administration of this statute.

The Committee recognizes that the issues involved in applying the countervailing duty law are complex, and that, internationally, there is the lack of any satisfactory agreement on what constitutes a fair, as opposed to an "unfair," subsidy. In the long run, United States interests will be best served by an international agreement to eliminate subsidies which distort world trade patterns and discriminate against United States sales both at home and abroad. Central to the forthcoming multilateral negotiations should be the establishment of acceptable international rules governing the use of subsidies. This is particularly important because of the strong possibility that oil importing nations will be tempted to subsidize their manufactured goods exports in order to pay for their "oil deficits."

The amendments to the existing law adopted by the Committee are designed to balance the need for assuring effective protection of domestic interests from foreign subsidies, on the one hand, with the need to afford some flexibility in the application of the United States' law which is essential for achieving a negotiated international agreement to the problems arising from the use of subsidies and imposition of countervailing duties. This flexibility would be continuously subject to supervision through a one-House veto procedure.

1. *Time Limits and Procedures.*—In order to assure that the interests of American producers will be protected from the adverse effect of trade-distorting foreign export subsidies, the Committee has restructured the manner in which the countervailing duty law operates. Specifically, the Committee has amended the bill as passed by the House in a number of significant procedural respects. The House bill would have imposed a twelve-month time limit for final decision by the Secretary from the date of publication of a notice initiating a formal investigation. However, there is nothing in the law or existing Treasury regulations which requires the Secretary to publish a notice of initiation of investigation within any particular time after receiving a complaint

under the countervailing duty law (although Treasury had indicated earlier that it would adopt a 30-day time period). In order to make the new time limits effective, the Committee has amended section 303(a) to require a six month maximum time limit for preliminary determination and a twelve month maximum time limit for a final determination beginning on the date of filing of a petition setting forth a belief that a bounty or grant is being paid or bestowed, or, in the absence of such a petition, from the date of publication of a notice of initiation of an investigation. The bill provides for the publication of a notice initiating a formal investigation upon the filing of a petition setting forth a belief that a bounty or grant is being paid or bestowed. However, the Secretary would be authorized to issue regulations setting forth reasonable standards which such petitions will have to meet in order to trigger a formal investigation. It is the intent of the Committee that these standards would be adopted and utilized for the purpose of assuring that the Secretary has sufficient information in order to determine whether or not to proceed, and not for the purpose of evading the time limits established by the Committee.

2. *Preliminary and Final Determinations.*—Under the Committee amendment to new section 303(a)(4), the Secretary would be required to make a *preliminary* determination within 6 months after a petition is filed (or notice of initiation of an investigation is published). The Secretary's final determination would be required within 12 months from the filing of a petition (or the publishing of notice of initiation of an investigation). These 6-month and 12-month time periods are *maximum* time periods within which the Secretary of the Treasury must make his preliminary and final determinations, respectively. Subject to the provisions of new section 303(d), whenever the Secretary of the Treasury has sufficient evidence to determine the existence of a bounty or grant, he can and should make his final determination and impose countervailing duties. If the Secretary has not yet made a tentative determination, he may consolidate both the tentative and final determinations in order to expedite the imposition of countervailing duties under section 303 of the 1930 Tariff Act, as amended by the Committee. Thus, a final countervailing duty determination could be made within 7 months, or one month or even less time after the filing of a petition or the publishing of a notice of initiation of an investigation.

3. *Full Publication of Determinations.*—The amendments would leave unchanged the present authority of the Secretary to determine or estimate the net amount of any bounty or grant in making his final determination and from time to time order such appropriate changes in the net amount so determined or estimated as, in his judgment, the facts indicate. Such changed amounts would become effective as indicated in any order of the Secretary, without regard to whether the merchandise in question is dutiable or nondutiable. The Secretary's authority to issue regulations for the identification of articles and merchandise subject to duties and for the assessment and collection of duties would also be maintained. The Committee also adopted, unchanged, the provision in the House bill requiring that all determinations by the Secretary and the Commission (whether affirmative or negative) be published in the Federal Register.

4. *Injury Test—Duty-Free Merchandise.*—The Committee agreed with the provision of the House bill extending the application of the countervailing duty law to duty-free articles. Under this provision, no additional duty could be imposed with respect to any duty-free article unless there is a determination by the International Trade Commission (within three months of any final determination by the Secretary of the Treasury as to the existence of a bounty or grant) that a domestic producer of like or directly competitive articles is being or is likely to be injured, or is prevented from being established by reason of importation of such article.

The inclusion of an injury standard is appropriate in light of the general countervailing duty rule in Article VI of the GATT which requires a finding of injury before such duties may be levied on subsidized product imports. Section 303 of the 1930 Tariff Act does not provide for an injury test. However, because the present U.S. countervailing duty law, which only applies to dutiable items, predates the GATT, it is within the permitted exceptions to the GATT under the so-called "grandfather clause". However, the extension of such law to nondutiable items is not covered by any such exception and so the nondutiable items should be subject to an injury test. The Committee expects that any negotiated concession by the United States to extend the injury requirement to dutiable items, which would be subject to approval by Congress, would be compensated for by concessions of equivalent value by foreign nations.

5. *Suspension of Liquidation on Final Determination.*—The bill would provide for the suspension of liquidation in the event the Secretary of the Treasury determines a bounty or grant exists with respect to nondutiable imports so as to require the same effective date for the imposition of countervailing duties regardless of whether the merchandise in question is dutiable or nondutiable. The House bill stipulated that countervailing duty orders, or, in the case of nondutiable merchandise, suspension of liquidation would take effect with respect to merchandise entered or withdrawn from the warehouse, for consumption on or after the 30th day after the publication in the Federal Register of the Secretary's final determination of the existence of a bounty or grant. The Committee has revised the House version to provide for the application of duties or suspension of liquidation immediately after publication of the Secretary's determination in the Federal Register. Under current Treasury practices, countervailing duty orders become effective 30 days after publication in the Customs Bulletin. The proposed amendments, then, would advance by 6 or 7 weeks the date countervailing duty orders become effective.

6. *Judicial Review Rights.*—Finally, so as to assure effective protection under the countervailing duty laws to American producers, the bill would provide to American manufacturers, producers or wholesalers, the right to judicial review of negative countervailing duty determinations by the Secretary of the Treasury.

7. *Temporary Provision While Negotiations Are in Process.*—The provisions outlined above are designed to tighten the administration of the countervailing duty law. As noted, a second concern of the Committee is the need to establish internationally acceptable rules and procedures governing the use of subsidies and imposition of countervailing duties.

The Committee believes that, in the final analysis, the interests of the United States will be best served by international agreement permanently eliminating the use of governmental subsidies which distort trade patterns. The forthcoming negotiations may offer the occasion for such an agreement, and the Committee recognizes that, in order to enable international resolution of the difficult problems involved in connection with subsidies, the Secretary of the Treasury must have flexibility to suspend the imposition of countervailing duties where such imposition would jeopardize negotiations authorized under section 102 of this Act. On the other hand, the Committee is concerned with the fact that the Administration has in the past utilized the lack of time limits in the existing statute to avoid the imposition of countervailing duties where such duties were required on the face of section 303 of the Tariff Act. Accordingly, the Committee is of the view that the proper way of resolving the conflict between the right of U.S. producers to have a remedy against subsidies and the need for flexibility in the upcoming international negotiations would be to require, at the least, that the adverse effect of subsidies be eliminated or substantially reduced and that Congress have a continuing opportunity to override any exercise of the discretion given to the President.

Under the House bill, the Secretary of the Treasury would have had a four-year period in which to waive the imposition of countervailing duties whenever he determined that such duties would have seriously jeopardized the satisfactory completion of the multilateral negotiations contemplated under Title I of this Act. This was unacceptable to the Committee. The House formulation made no reference to the adverse effect of such subsidized imports upon the U.S. economy; it did not direct that such adverse effects on U.S. producers be eliminated or substantially reduced; nor did it provide Congress with the ability to override the President's determination to waive the imposition of countervailing duties under the Act.

The Committee completely revised the temporary provision dealing with the Secretary's authority to waive countervailing duties during the trade negotiations. As indicated earlier, under the Committee bill, the Secretary would be required to make a preliminary determination as to the existence of a bounty or grant within six months from the date of the petition. If this determination were affirmative, the Secretary would have an additional six months to negotiate with the particular foreign countries in an attempt to obtain the elimination or substantial reduction of the bounty or grant or its adverse effects. At the end of one year (a maximum of six months following the preliminary determination), if the bounty or grant or any portion thereof remained in effect, the Secretary of the Treasury would be required to issue a final positive countervailing duty order. However, the Secretary could suspend the application of the order if, and only if, he determined that:

- (a) adequate steps had been taken to reduce substantially or eliminate the adverse effect of the bounty or grant;
- (b) there was a reasonable prospect that successful trade agreements would be entered into, under section 102, with foreign countries or instrumentalities providing for the reduction or

elimination of barriers to or other distortions of international trade; and

(c) the imposition of countervailing duties would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Under the Committee bill, all three conditions must be met before the Secretary could waive the application of the countervailing duty. Under the Committee amendment, this temporary discretion in the application of the countervailing duty law could not be abused during the negotiations, *since* all three conditions would have to be met before such discretion could be exercised. The Committee believes this provision would be used sparingly since foreign countries should be encouraged to eliminate the bounty or grant during the six-month period following a positive preliminary determination and before the twelve-month period for a final determination.

The Committee also limited the authority to waive the imposition of countervailing duties after a final order has been issued to a two-year period following the date of enactment. The Committee felt that the Congress ought to be given an opportunity during the course of the trade negotiations to examine how the waiver authority was used, and what progress was made in the negotiation of fair trade principles.

The Committee intends to weigh carefully how this authority has been exercised during the negotiations when it considers any implementing legislation involving trade agreements negotiated under authority granted by this bill.

As a further check on the possible abuse of this discretion, the Committee provided that whenever the waiver authority is exercised, either House of Congress could, at any time thereafter, pass a simple resolution of disapproval of the waiver. If such a resolution is approved by either House, the Secretary of the Treasury would be required to apply a countervailing duty to offset the amount of the bounty or grant found in his final order.

Since the major objective of the waiver is to encourage the successful completion of negotiations involving non-tariff barriers and trade-distorting devices, particularly unfair subsidies, the authority to waive countervailing duties would be limited to the specific two-year period following the date of enactment of the bill. It should be emphasized that, under the Committee amendment, either the bounty or grant or its adverse effect must be eliminated (or substantially reduced) before the Secretary would have authority to waive the imposition of a countervailing duty order during trade negotiations. Furthermore, the Secretary is authorized to revoke his waiver whenever any of the three criteria upon which he made his original determination no longer exists. In such a case, the countervailing duty order would go into effect on the day after the date of publication of any revocation of the waiver.

8. *One-House Veto*.—Any time the Secretary decided to suspend the imposition of countervailing duties under this provision, he would immediately report the determination made by him under new section 303(d) of the countervailing duty section of the 1930 Tariff Act

to the Congress, together with his reasons for making such determination. *At any time* following the receipt of such a report by the Secretary that he has suspended the imposition of countervailing duties, either House of Congress by an affirmative vote of a majority of those present and voting could adopt a resolution of disapproval under the procedures set forth in section 152 of the Committee bill. Upon the adoption of any resolution of disapproval by any House, the countervailing duty order originally issued by the Secretary would apply with respect to articles entered or withdrawn from warehouse for consumption beginning with the day after the date of the adoption of such resolution of disapproval.

9. *Articles Subject to Quota Restrictions.*—The Committee has excluded from the bill a provision adopted by the House which would have permitted the Secretary of the Treasury to refrain from imposing countervailing duties on the imports of articles subject to quotas in any case where such quotas afford an adequate substitute for additional duties. The Committee believes that quantitative restrictions for such purposes as agricultural support schemes are clearly distinguishable in purpose from countervailing duties and that they are not readily interchangeable. In particular, this question has been raised in connection with the imposition of additional duties on dairy products subject to quotas under section 22 of the Agricultural Adjustment Act of 1933. The Committee did not want to provide the Executive with the powers to loosen quotas to the point where they are meaningless, and at the same time, *not* impose countervailing duties on subsidized exports to the United States.

The Committee believes its amendments to the countervailing duty law would provide the Executive with reasonable flexibility to negotiate an effective international agreement affecting subsidies, while protecting U.S. producers from the adverse effects of such subsidies. Through the one-House veto procedure, Congress would be able to insure that the Secretary's discretion is exercised in a manner consistent with all of the interests involved.

10. *European Dairy Subsidies.*—The export subsidy program under the European Community's Common Agricultural Policy (CAP) has been a continuing concern to the Committee. In recent months, that concern has apparently been shared by the U.S. Treasury, which has finally taken some action to counter the adverse effects of subsidized dairy imports into this country. In the case of dairy imports, the Secretary has undertaken certain commitments with respect to the use of countervailing duties against certain subsidized imports. Furthermore, the European Community, after some prodding, has temporarily refrained from granting subsidies on the particular dairy products concerned. In order to make the resolution of the problem of E.C. dairy export subsidies clear to all concerned, and to indicate how the amendments adopted by the Committee serve the concerns of both the Executive and Legislative branches, Senators Nelson and Mondale have requested the Committee to include in this report letters received by them from the Deputy Special Representative for Trade Negotiations and the Assistant Secretary for Enforcement, Operations and Tariff Affairs of the Department of the Treasury. The letters follow:

DEPUTY SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,  
*Washington, October 2, 1974.*

HON. WALTER F. MONDALE,  
*U.S. Senate,*  
*Washington, D.C.*

DEAR SENATOR MONDALE: You have asked about the status of any discussions between officials of the U.S. government and the European Community as regards the resolution of the problem of E. C. dairy export subsidies. When the E. C. suspended its restitution payments, Treasury and the Court determined that no further Treasury action was called for under those circumstances. The E. C. has asked what would be done in the future in the light of possible changes in the law (under revisions incorporated in the Trade Reform Act), and we have said that we shall have to wait to see what the Congress will provide. I can assure you that there have been no private or public agreements regarding resolution of the problems arising out of the pending countervailing duty case in relation to imports from the E.C. In particular, we have not made any assurances, or even raised hopes, of any adjustments in the dairy import quota situation in connection with the proposed compromise package which STR and you and Senator Nelson have been discussing. The compromise package, as we have outlined it to you, composed of the attached memorandum and draft Treasury letter, represents a comprehensive approach to meeting the special problems of the dairy industry.

Moreover, the Special Trade Representative's Office would not recommend any changes in quotas in connection with trade policy without prior consultation with you and the representatives of the dairy industry whatever the elements of such a settlement insofar as they affect dairy farmers.

The compromise proposal which results from our common effort with you is a package with which we can live and to which we can support in conference if it is agreeable to the Senate.

I recognize the real problems and special circumstances of the dairy industry. It is in relation to this recognition of the problems, and of your own concerns, that we have made a major effort to tailor this special approach to dealing with a most delicate problem without prejudice to the interests of other American farmers or to our national economic interests. This latter point is important because we are very much concerned with the need to avoid possible spillover effects on other American economic interests, particularly agricultural interests, of a confrontation with our trading partners.

Sincerely,

HARALD B. MALMGREN.

THE DEPARTMENT OF THE TREASURY,  
*Washington, D.C., October 3, 1974.*

HON. GAYLORD NELSON,  
 HON. WALTER F. MONDALE,  
*U.S. Senate, Washington, D.C.*

DEAR SENATORS NELSON AND MONDALE: I have been asked for the views of the Treasury Department concerning how proposed amend-



ments to the countervailing duty law relating to a limited conditional discretionary authority in the Treasury Department not to apply countervailing duties during the period of negotiations under the Trade Reform Act might affect the pending Treasury investigation of dairy imports from the European Community and what future action can be expected regarding this case.

As you know, we are committed to proceeding immediately under the countervailing duty law should the EC reinstate the export payments on dairy products they suspended on July 12 on cheese and previously on other products. I do not believe that this commitment would be affected in any way by enactment of any of the amendments to the law now being contemplated by the Senate Finance Committee.

Any attempt to avoid or delay the imposition of countervailing duties by the mere subterfuge of substituting one incentive program for another, with no significant differences between the two, would, in our opinion, be treated as though the above-described export payments had been resumed. In this event, a rapid determination could be made within the time limits set forth in the July 16 stipulation between the Treasury and the complainant in the EC dairy case.

Should the Europeans propose to put in place a new export policy or program, an appraisal of the factual situation would need to be made and matched to the criteria set forth in the law, as amended. Such an appraisal would be given high priority. Assuming this new scheme were found to constitute a bounty or grant within the meaning of the countervailing duty law, the EC would be required to take steps to substantially reduce or eliminate the effects of the program on the U.S. dairy industry to avoid the imposition of offsetting additional duties. The finding relating to those steps would be made *only* after very close consultations by the Executive Branch with domestic industry and concerned Members of Congress. It would need to be clearly shown that the problems of U.S. producers had been substantially relieved. Any determination not to impose additional duties because of the steps taken to reduce or eliminate the effects of the incentive program would be appropriate only if it appeared that the imposition of such duties would seriously jeopardize trade negotiations and would be subject to Congressional override under the provisions of the amendment.

I believe that the proposed amendment would provide an excellent tool for achieving the equally important objectives of protecting domestic industry from foreign unfair trade practices, while at the same time providing sufficient flexibility during the period of negotiation. The Treasury Department would support an additional amendment making countervailing duty orders effective immediately. That is, additional duties would be imposed on the day after publication in the Federal Register of a final affirmative determination. This change would provide for the immediate offsetting of any bounty or grant being bestowed on the merchandise in question, rather than permitting such merchandise to continue to enter the United States free of additional duties for a significant period following such a final determination.

You can be sure that whatever the amendments to the countervailing duty law, they will be applied during this period in such a way

as to prevent injurious subsidized dairy import from the European Community.

Sincerely,

DAVID R. MACDONALD,  
*Assistant Secretary*  
(*Enforcement, Operations, and Tariff Affairs*).

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The amendments made by the Committee bill to the countervailing duty law would take effect on the date of enactment of this bill. In the case of any investigation which was initiated prior to the date of enactment of this bill, the six-month and one-year time limitations set out in new section 303(a)(4) would apply as if those existing investigations had been initiated by the Secretary on the day after the date of enactment of this bill. Any article entered free of duty as a result of preferences extended under Title V of the bill shall be considered a non-dutiable article for purposes of the countervailing duty law as amended.



## CHAPTER 4. UNFAIR IMPORT PRACTICES

### AMENDMENTS TO SECTION 337 OF THE TARIFF ACT OF 1930

#### (Section 341)

Section 341 of the bill would amend section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, 1337a). Section 337 presently authorizes the International Trade (Tariff Commission) to investigate, in order to assist the President in making decisions under this section, alleged unfair methods of competition or unfair acts in the importation of articles into the United States or in the sale of imported articles in the United States. The Commission investigates to determine whether such methods or acts are being practiced, and whether such methods or acts have the effect or tendency of destroying or substantially injuring an efficiently and economically operated U.S. industry, preventing the establishment of a U.S. industry, or restraining or monopolizing trade or commerce in the United States. The Commission reports the findings of each investigation to the President. When the existence of an unfair method or act is established to the satisfaction of the President, he directs the Secretary of the Treasury to exclude from entry the articles involved in such unfair method or act which are imported by any person violating the section. If the President has reason to believe that the section is being violated, he may order exclusion of the articles involved, subject to their entry under bond, until such investigation as he deems necessary is completed.

The major Committee amendments would change the existing provisions of section 337 as they relate to the basic respective roles and authority of the President and of the Commission. Under the amendments, the Tariff Commission would be granted final authority to determine, subject to judicial review, whether section 337 has been violated, and would in such case order the exclusion from entry of articles involved in such violation or issue a cease and desist order (a new remedy provided by the Committee's amendments). Also, the Commission could, pending determination of whether section 337 is being violated, order exclusion from entry of articles involved, or issue a cease and desist order, if it had reason to believe section 337 is being violated, except that such articles could enter under bond.

However, before ordering exclusion or issuing a cease and desist order, the Commission would be required to consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers. The Committee feels that the public interest must be paramount in the administration of this statute.

Under the Committee's amendments, the President would be given authority to intervene and disapprove any Commission determination

of a violation of section 337 or of a reason to believe there is a violation thereof if, within 60 days of his receipt of a copy of such determination, he disapproves such determination for policy reasons.

Other Committee amendments would, *inter alia*, set specific time limits within which the Commission would investigate and determine whether section 337 is being violated, provide the Commission, as indicated above, with a less drastic remedy to violations of section 337 than exclusion of articles, and permit continued importation of articles subject to a Commission exclusion or cease and desist order when such order is based only upon U.S. letters patent and the imported articles are for U.S. Governmental use.

Section 341(a) of the bill would amend section 337 of the 1930 Tariff Act (hereinafter referred to as the Act) in its entirety, providing that it would read as set out in the bill. Subsection (a) of section 337, as amended by the Committee in this bill, would remain unchanged except for providing that violations of section 337 are to be found by the Commission instead of by the President. No change has been made in the substance of the jurisdiction conferred under section 337(a) with respect to unfair methods of competition or unfair acts in the import trade.

Section 337(b) (1) of the Act, as amended by the bill, would continue, as under present law, to authorize the Commission to investigate alleged violations of section 337 on complaint or on the Commission's initiative. Further, it would provide that upon commencing an investigation under section 337, the Commission would publish notice thereof, and conclude such investigation and determine whether section 337 is being violated within one year from the date of publication, or in more complicated cases, within 18 months. The Commission would be required to publish its reasons for designating an investigation a more complicated investigation. The running of the one year or 18 month time period for completion of the Commission investigation would be tolled whenever the Commission investigation is suspended because of proceedings in another federal forum involving similar questions concerning the subject matter of such investigation.

Under amended section 337(b) (1), it is the intent of the Committee that an investigation be commenced by the Commission as soon as possible after receipt of a properly filed petition, but it is not the intent of the Committee to compel the Commission to institute an investigation before it has had an adequate opportunity to identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefor, and to give attention to other preliminary matters.

This section would require that the Commission investigation be concluded, and that the Commission make its determination under section 337, within the time period prescribed. The Committee intends for the term "more complicated investigation" to refer to investigations which are of an involved nature due to the subject matter, difficulty in obtaining information, or large number of parties involved. The provision for the tolling of the running of the time limits provided by this amended section is intended to apply to situations where the section 337 proceedings are suspended due to concurrent proceedings involving similar issues concerning the same subject matter before a

court or agency of the United States. Such suspension of proceedings may be undertaken by the Commission, as an exercise of its own discretion, or as a result of a court order to the same effect.

Section 337(b) (2) of the Act, as amended, would also provide that during the course of a Commission investigation, the Commission must consult with, and seek advice and information from, the Department of Health, Education, and Welfare, the Department of Justice, and the Federal Trade Commission, and also any other governmental source it deems appropriate. The Commission under the Committee's amendments, is required, as noted above, to consider before ordering any exclusion of entry or issuing any cease and desist order, the impact of such action on various interests, including consumers, competitive conditions in the economy, and the public welfare. Various government agencies, such as those named above, will often have significant information, as well as sound advice, about such impact.

Further, such agencies will often have information and insight which is relevant to the Commission's determination of whether there is reason to believe, or there is, a violation of section 337. This provision supplements section 334, Tariff Act of 1930, relating to cooperation and advice to be exchanged between the Commission and agencies of the Executive branch. While the Committee would require the Commission to seek advice and information from certain agencies and Departments, it is anticipated that the Commission will permit any party with relevant information to present such information to the Commission during the course of an investigation.

Section 337(b) (3), as amended by this bill, would provide that the Commission, when it has reason to believe based on information available to it that the subject matter of an investigation it is conducting may come within the purview of section 303 of the Tariff Act of 1930 or of the Antidumping Act, 1921, shall notify the Secretary of the Treasury so that such action may be taken as is otherwise authorized by section 303 or the Antidumping Act. It is expected that the Commission's practice of not investigating matters clearly within the purview of either section 303 or the Antidumping Act will continue.

Section 337(c) of the Act, as amended by the Committee, would require that the Commission determine whether there is a violation of this section in each investigation it conducts. Both determinations of whether section 337 is being violated and whether there is reason to believe that there is a violation of this section would be required to be made by the Commission on the record after notice and opportunity for a full hearing in conformity with the provisions of subchapter II of chapter 5 of title 5 of the United States Code. The full hearing required would be a full "due process" hearing, with the Commission of course being able to impose reasonable restraints on the time to be devoted to such hearings.

Section 337(c) of the Act, as amended, would now also provide that the Commission accept and consider, in reaching its findings, evidence regarding all legal and equitable defenses, and, in cases based upon claims of U.S. letters patent, specifically a defense based upon claims of price gouging.

With regard to cases based upon the claims of U.S. letters patent, the term price gouging in this section is intended to convey the idea of

unconscionable pricing policies by the holder of a patent or a party operating under such patent. For example, price gouging could be found to exist if the prices a party producing under the patent is receiving for the article covered by the patent have no reasonable relationship to his costs, including an appropriate share of general research and development expenses, or when such prices are unreasonably higher than the prices generally received under comparable circumstances for similar articles, especially when the article is important to the health and welfare. The Commission would also consider the evolution of patent law doctrines, including defenses based upon antitrust and equitable principles, and the public policy of promoting "free competition", in the determination of violations of the statute.

For a period of approximately 50 years, the Commission has entertained complaints of importation or sale of articles allegedly made in accordance with the specifications and claims of a U.S. patent, first under the provisions of section 316 of the Tariff Act of 1922, and then pursuant to successor provisions in section 337 of the Tariff Act of 1930. In its investigations under these provisions, the Commission had found that, under certain circumstances, the importation or domestic sale of an article manufactured abroad in accordance with the invention disclosed in a U.S. patent constitutes one type of unfair method or unfair act within the meaning of the statute. The Commission has also established the precedent of considering U.S. patents as being valid unless and until a court of competent jurisdiction has held otherwise. However, the public policy recently enunciated by the Supreme Court in the field of patent law (cf., *Lear, Inc. v. Atkins*, 395 U.S. 653 (1969)) and the ultimate issue of the fairness of competition raised by section 337, necessitate that the Commission review the validity and enforceability of patents, for the purposes of section 337, in accordance with contemporary legal standards when such issues are raised and are adequately supported. The Committee believes the Commission may (and should when presented) under existing law review the validity and enforceability of patents, but Commission precedent and certain court decisions have led to the need for the language of amended section 337(c). The Commission is not, of course, empowered under existing law to set aside a patent as being invalid or to render it unenforceable, and the extent of the Commission's authority under this bill is to take into consideration such defenses and to make findings thereon for the purposes of determining whether section 337 is being violated.

The relief provided for violations of section 337 is "in addition to" that granted in "any other provisions of law". The criteria of section 337 differ in a number of respects from other statutory provisions for relief against unfair trade practices. For example, in patent-based cases, the Commission considers, for its own purposes under section 337, the status of imports with respect to the claims of U.S. patents. The Commission's findings neither purport to be, nor can they be, regarded as binding interpretations of the U.S. patent laws in particular factual contexts. Therefore, it seems clear that any disposition of a Commission action by a Federal Court should not have a res judicata or collateral estoppel effect in cases before such courts.

Further, under section 337 (c), as amended, the Committee would extend the right to judicial review of final Commission determinations (of whether there is a violation of section 337 or whether there is rea-

son to believe there is a violation) to complainants before the Commission, as well as continuing to permit owners, importers, and consignees of the articles involved in such determinations to secure such review. By final determination, as used in this section, the Committee means a Commission determination which has been referred to the President under amended section (g) of section 337, and has been approved by the President or has not been disapproved for policy reasons by the President within the 60 day period after referral of the determination. The judicial review provided is in the Court of Customs and Patent Appeals, in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the U.S. Customs Court.

Section 337(d) of the Act, as contained in this bill, amends present section 337(e) by providing that the Commission, instead of the President, shall direct that articles imported by persons violating the provisions of section 337 be excluded from entry into the United States. The exclusion from entry is to be effective upon notification of the Secretary of the Treasury of the Commission action; except that pursuant to section 337(g)(3), as amended by this bill, the articles directed to be excluded from entry shall be entitled to entry, under bond determined by the Commission and prescribed by the Secretary of the Treasury, until the Commission's determination that section 337 is being violated has become final, at which point the articles shall be excluded from entry; this provides time for the President to consider whether to intervene under amended section 337(g), before the exclusion is effective. Such direction may only be made after the Commission has determined that section 337 is being violated, and then provided that the Commission has not found that it should not issue such direction due to its impact upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

The Committee believes that the public health and welfare and the assurance of competitive conditions in the United States economy must be the overriding considerations in the administration of this statute. Therefore, under the Committee bill, the Commission must examine (in consultation with other Federal agencies) the effect of issuing an exclusion order or a cease and desist order on the public health and welfare before such order is issued. Should the Commission find that issuing an exclusion order would have a greater adverse impact on the public health and welfare; on competitive conditions in the United States economy; on production of like or directly competitive articles in the United States; or on the United States consumer, than would be gained by protecting the patent holder (within the context of the U.S. patent laws) then the Committee feels that such exclusion order should not be issued. This would be particularly true in cases where there is any evidence of price gouging or monopolistic practices in the domestic industry.

Section 337(e) of the Act, as amended by the Committee, provides that when the Commission has reason to believe during the course of an investigation under section 337, that an article is offered or sought to be offered for entry into the United States in violation of section 337, but the Commission does not have sufficient information to estab-



lish to its satisfaction that the section is being violated, then the Commission can direct that the article be excluded from entry until the Commission has completed such investigation as it deems necessary to resolve the matter. The exclusion of the articles involved would become effective upon notification by the Commission of the Secretary of the Treasury of its action directing exclusion.

Under this amended section 337(e), as under present law, the articles forbidden entry would in fact be entitled to entry under bond. However, while under present law the bond is determined and prescribed by the Secretary of the Treasury, under amended section 337(c), the Commission would determine the amount of the bond and inform the Secretary of the Treasury of the amount of the bond to be prescribed. It is intended that the determination of the Commission regarding the amount of the bond be binding upon the Secretary, whose function is to prescribe the bond. In determining the amount of the bond, the Commission shall determine, to the extent possible, the amount which would offset any competitive advantage resulting from the unfair method of competition or unfair act enjoyed by persons benefiting from the importation of the article. After making a determination under this section, the amended section also would require that the Commission consider the impact of its action under this section on the interests referred to in section 337(d), as amended, i.e., the public health and welfare, consumers, etc.

Section 337(f) of the Act, as amended by this bill, would be a new provision authorizing the Commission to issue cease and desist orders, in lieu of excluding articles, against any persons violating, or believed to be violating, section 337. Such an order could be modified or revoked at any time, and when revoked, could be replaced by an exclusion order. It is clear to your committee that the existing statute, which provides no remedy other than exclusion of articles from entry, is so extreme or inappropriate in some cases that it is often likely to result in the Commission not finding a violation of this section, thus reducing the effectiveness of section 337 for the purposes intended.

The power to issue cease and desist orders would add needed flexibility. Any cease and desist order issued by the Commission would, as with directions to exclude from entry, be effective upon issuance, but articles subject to the order are entitled to entry under bond determined by the Commission and prescribed by the Secretary of the Treasury in order to permit the President to exercise his authority under section 337(g). Also, as in sections 337(d) and (e), the Commission would have to consider the impact of any cease and desist order it would issue on the various interests described in such sections.

Section 337(g) of the Act, as amended by the Committee, would require that affirmative determinations of the Commission under section 337(d) or (e), as amended, be published in the Federal Register and transmitted to the President along with a statement of the action taken—directing the refusal of entry of articles or issuing a cease and desist order—and with the record upon which such determination is based. The President may, within 60 days after receipt of such determination, disapprove for policy reasons the Commission determination. The President would then notify the Commission of his disapproval, and on the date of such notice, the determination and the

action taken with respect to it would have no force or effect. It is recognized by the Committee that the granting of relief against imports could have a very direct and substantial impact on United States foreign relations, economic and political. Further, the President would often be able to best see the impact which the relief ordered by the Commission may have upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.

Therefore, it was deemed appropriate by the Committee to permit the President to intervene before such determination and relief become final, when he determines that policy reasons require it. The President's power to intervene would not be for the purpose of reversing a Commission finding of a violation of section 337; such finding is determined solely by the Commission, subject to judicial review.

Section 337(h) of the Act, as amended by this bill, would change the present provision of section 337 dealing with the continuance of exclusion orders so as to conform it with the expanded actions available to the Commission, and to take into account the new role of the President, under section 337, as amended by this bill.

Section 337(i) of the Act, as added by your Committee, would provide that any exclusion order or cease and desist order issued by the Commission in connection with a violation, or reason to believe there is a violation, of this section based only upon the claims of United States letters patent, would not apply to articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government. Any patent owner adversely affected by this section would be entitled to reasonable and entire compensation pursuant to 28 U.S.C. 1498. It is the intention of your committee that whenever the Government participated in the particular Commission proceedings under section 337, or had notice thereof and an opportunity to participate, the only question before the Court of Claims under this section would be the amount of the reasonable and entire compensation.

Section 337(j) of the Act, as amended by this bill, would amend the present provision of section 337 (section 337(h)) to define the term United States as meaning the customs territory of the United States as defined in general headnote 2 of the Tariff Schedules of the United States. Such amendment would conform section 337 to the prevailing definition, and would also prevent the necessity of amending section 337 to take account of any change in the customs territory of the United States.

Section 341(b) of the bill would amend section 332(g) of the Act to provide that the annual Commission report to Congress required by that section shall include a list of complaints filed under section 337 during the year for which the report is being made, the date each complaint was filed, the action taken on each complaint, the status of all investigations conducted by the Commission during such year and the date each such investigation was commenced. This reporting requirement would enable Congress to oversee the activities under this section more closely and more easily than now, and help

ensure that the Commission is carrying out its functions under this section.

Section 341(c) of the bill is a transitional paragraph which provides that the amendments made by section 341 of this bill would become effective 90 days after enactment of this bill, except that they would become effective upon the date of enactment for the purpose of the Commission issuing regulations to effectuate the amendments. For the purposes of cases pending before the Commission on the day prior to the 90th day after the date of enactment of this bill, the time limits in section 337(b), as amended, would apply as if such investigations were commenced on the 90th day.

#### **Title IV.—Trade Relations With Countries Whose Products Are Not Currently Receiving Nondiscriminatory (Most-Favored-Nation) Treatment**

Title IV of the bill would authorize the President to extend non-discriminatory tariff (most-favored-nation) treatment to countries now denied such treatment (i.e., all communist countries except Yugoslavia and Poland) when certain conditions were met. The Congress would be given procedures for approving, withdrawing or denying such nondiscriminatory treatment. The Committee strongly believes that the authority to extend or withdraw nondiscriminatory treatment to countries not now receiving such treatment could be a useful factor in enabling the President to obtain important mutual and material economic benefits for the United States, while, at the same time, improving relations with these countries.

The United States has lagged behind other non-communist countries in expanding its trade relations with the communist world. The table below shows that since 1957, U.S. exports to East European communist countries exceeded imports from those countries, but even in the year in which the United States had the greatest exchange of goods with those countries (1973) the value of U.S. trade was still less than 10 percent of the value of overall non-communist country trade with the communist countries of Eastern Europe.

#### **EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS**

##### **(Section 401)**

Except as otherwise provided in Title IV, Section 401 would retain the requirement in Section 231(a) of the Trade Expansion Act of 1962 that nondiscriminatory treatment be denied to the products of all communist countries except Poland and Yugoslavia. The countries presently ineligible to receive nondiscriminatory treatment, as set forth in headnote 3(e) to the Tariff Schedules of the United States, are Albania, Bulgaria, the People's Republic of China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, those parts of Indochina under communist control or domination, North Korea, the Kurile Islands, Latvia, Lithuania, Outer Mongolia, Romania, Southern Sakhalin, Tanna Tuva, Tibet and the USSR. Imports from these countries must pay higher (column 2) rates of duty than imports from other countries. The average rate of duty paid on dutiable imports from communist countries was 23.9% in 1972, as compared with an average rate of 8.6% for other countries.

The term "nondiscriminatory treatment" is intended to be synonymous with "most-favored-nation" treatment. Products of a country given such treatment would be subject to the normal (column 1) rates of duty to which the products of non-communist nations are now subject.

# FREE WORLD TRADE WITH THE U.S.S.R. AND EASTERN EUROPE

[In U.S. dollars]

	Free World (billions) <sup>1</sup>		United States (millions) <sup>2</sup>	
	Exports	Imports	Exports	Imports
1950 .....	1.1	1.3	27	80
1951 .....	1.2	1.4	3	64
1952 .....	1.2	1.3	1	40
1953 .....	1.1	1.2	2	36
1954 .....	1.5	1.5	6	42
1955 .....	1.8	1.9	7	56
1956 .....	2.1	2.3	11	65
1957 .....	2.6	2.6	86	61
1958 .....	2.6	2.7	113	62
1959 .....	3.0	3.0	89	81
1960 .....	3.6	3.6	194	81
1961 .....	3.8	3.9	134	81
1962 .....	4.1	4.1	125	79
1963 .....	4.5	4.6	167	81
1964 .....	5.4	5.3	340	98
1965 .....	5.8	6.0	140	137
1966 .....	6.6	6.7	198	179
1967 .....	6.8	7.0	195	177
1968 .....	7.3	7.7	215	198
1969 .....	8.3	8.4	249	195
1970 .....	9.7	9.3	354	226
1971 .....	10.1	9.9	384	223
1972 .....	13.1	11.1	819	321
1973 .....	18.2	15.5	1,797	519
1974 (Jan.-Sept.)	N.A.	N.A.	1,011	662

<sup>1</sup> Exports are f.o.b. and imports, in general, are c.i.f.<sup>2</sup> Exports and imports are f.o.b.

N.A. Not Available.

Note: East European countries include East Germany, Czechoslovakia, Poland, Hungary, Estonia, Latvia, Lithuania, Albania, Romania, and Bulgaria.

Source: U.S. Department of Commerce.

## FREEDOM OF EMIGRATION IN EAST-WEST TRADE

(Section 402)

Section 402 would make the products of a nonmarket economy country not now receiving nondiscriminatory treatment (i.e. all communist countries except Poland and Yugoslavia) ineligible to receive such treatment during any period in which the President determines

that it denies its citizens the right or opportunity to emigrate, or imposes more than nominal charges on emigration (or on related documents) or on its citizens as a consequence of their desire to emigrate. Such countries would be barred from participating in any program of the U.S. Government that extends credits or credit guarantees or investment guarantees, directly or indirectly, for example, under programs of the Export-Import Bank and Commodity Credit Corporation. Conclusion of commercial agreements by the U.S. Government with such countries would also be barred.

After the President submits to Congress a report indicating that emigration practices of a country not now receiving nondiscriminatory treatment satisfy these criteria, its products would become eligible for such treatment, and the President would no longer be enjoined from concluding a commercial agreement with it. Nondiscriminatory treatment could not be extended, and such a commercial agreement could not take effect until the Congress has approved a bilateral commercial agreement with such country. In the case of countries with existing bilateral agreements with the United States, nondiscriminatory treatment may be provided the products of such country unless the Congress vetoes the extension of such benefits to such country. The President's report should include information on the nature and implementation of the country's emigration laws and policies, and restrictions or discrimination applied to or against persons wishing to emigrate. The report would be required biannually as long as nondiscriminatory treatment, credits, or guarantees are extended, or a commercial agreement remains in effect.

The Committee anticipates that an amendment will be offered during the Senate's consideration of the bill which would allow a temporary, conditional waiver of this provision under circumstances to be specified in the amendment. This amendment was not available by the time the Committee ordered the bill favorably reported, and the Committee has therefore not had an opportunity to study or take a position on the amendment. The Committee will hold a hearing on the amendment before the bill is taken up on the floor.

The Committee reserves the right to recommend to the Senate such amendment as may be necessary to clarify the procedures relating to the determination of freedom of emigration after conducting public hearings on the subject and before consideration of the bill on the Floor of the Senate.

In the case of freedom of emigration from the Soviet Union, the following exchange of letters between Secretary of State Henry A. Kissinger and Senator Henry M. Jackson (D. Wash.) sets forth certain understandings with respect to persons wishing to emigrate from the Soviet Union.

EXCHANGE OF LETTERS BETWEEN SECRETARY KISSINGER  
AND SENATOR JACKSON

OCTOBER 18, 1974.

DEAR SENATOR JACKSON: I am writing to you, as the sponsor of the Jackson Amendment, in regard to the Trade Bill (H.R. 10710) which is currently before the Senate and in whose early passage the administration is deeply interested. As you know, Title IV of that bill, as it

emerged from the House, is not acceptable to the administration. At the same time, the administration respects the objectives with regard to emigration from the U.S.S.R. that are sought by means of the stipulations in Title IV, even if it cannot accept the means employed. It respects in particular your own leadership in this field.

To advance the purposes we share both with regard to passage of the trade bill and to emigration from the U.S.S.R., and on the basis of discussions that have been conducted with Soviet representatives, I should like on behalf of the administration to inform you that we have been assured that the following criteria and practices will henceforth govern emigration from the U.S.S.R.

First, punitive actions against individuals seeking to emigrate from the U.S.S.R. would be violations of Soviet laws and regulations and will therefore not be permitted by the government of the U.S.S.R. In particular, this applies to various kinds of intimidation or reprisal, such as, for example, the firing of a person from his job, his demotion to tasks beneath his professional qualifications, and his subjection to public or other kinds of recrimination.

Second, no unreasonable or unlawful impediments will be placed in the way of persons desiring to make application for emigration, such as interference with travel or communications necessary to complete an application, the withholding of necessary documentation and other obstacles including kinds frequently employed in the past.

Third, applications for emigration will be processed in order of receipt, including those previously filed, and on a nondiscriminatory basis as regards the place of residence, race, religion, national origin and professional status of the applicant. Concerning professional status, we are informed that there are limitations on emigration under Soviet law in the case of individuals holding certain security clearances, but that such individuals who desire to emigrate will be informed of the date on which they may expect to become eligible for emigration.

Fourth, hardship cases will be processed sympathetically and expeditiously; persons imprisoned who, prior to imprisonment, expressed an interest in emigrating, will be given prompt consideration for emigration upon their release; and sympathetic consideration may be given to the early release of such persons.

Fifth, the collection of the so-called emigration tax on emigrants which was suspended last year will remain suspended.

Sixth, with respect to all the foregoing points, we will be in a position to bring to the attention of the Soviet leadership indications that we may have that these criteria and practices are not being applied. Our representations, which would include but not necessarily be limited to the precise matters enumerated in the foregoing points, will receive sympathetic consideration and response.

Finally, it will be our assumption that with the application of the criteria, practices, and procedures set forth in this letter, the rate of emigration from the U.S.S.R. would begin to rise promptly from the 1973 level and would continue to rise to correspond to the number of applicants.

I understand that you and your associates have, in addition, certain understandings incorporated in a letter dated today respecting the foregoing criteria and practices which will henceforth govern emigration

from the U.S.S.R. which you wish the President to accept as appropriate guidelines to determine whether the purposes sought through Title IV of the trade bill and further specified in our exchange of correspondence in regard to the emigration practices of non-market economy countries are being fulfilled. You have submitted this letter to me and I wish to advise you on behalf of the President that the understandings in your letter will be among the considerations to be applied by the President in exercising the authority provided for in Sec. 402<sup>1</sup> of Title IV of the trade bill.

I believe that the contents of this letter represent a good basis, consistent with our shared purposes, for proceeding with an acceptable formulation of Title IV of the trade bill, including procedures for periodic review, so that normal trading relations may go forward for the mutual benefit of the U.S. and the U.S.S.R.

Best regards,

HENRY A. KISSINGER.

OCTOBER 18, 1974.

DEAR MR. SECRETARY: Thank you for your letter of Oct. 18 which I have now had an opportunity to review. Subject to the further understandings and interpretations outlined in this letter, I agree that we have achieved a suitable basis upon which to modify Title IV by incorporating within it a provision that would enable the President to waive subsections designated (a) and (b) in Sec. 402 of Title IV as passed by the House in circumstances that would substantially promote the objectives of Title IV.

It is our understanding that the punitive actions, intimidation or reprisals that will not be permitted by the government of the U.S.S.R. include the use of punitive conscription against persons seeking to emigrate, or members of their families; and the bringing of criminal actions against persons in circumstances that suggest a relationship between their desire to emigrate and the criminal prosecution against them.

Second, we understand that among the unreasonable impediments that will no longer be placed in the way of persons seeking to emigrate is the requirement that adult applicants receive the permission of their parents or other relatives.

Third, we understand that the special regulations to be applied to persons who have had access to genuinely sensitive classified information will not constitute an unreasonable impediment to emigration. In this connection we would expect such persons to become eligible for emigration within three years of the date on which they last were exposed to sensitive and classified information.

Fourth, we understand that the actual number of emigrants would rise promptly from the 1973 level and would continue to rise to correspond to the number of applicants, and may therefore exceed 60,000 per annum. We would consider a benchmark—a minimum standard of initial compliance—to be the issuance of visas at the rate of 60,000 per annum; and we understand that the President proposes to use the same benchmark as the minimum standard of initial compliance. Until such time as the actual number of emigrants corre-

<sup>1</sup> Statutory language authorizing the President to waive the restrictions in Title IV of the Trade Bill under certain conditions will be added as a new (and as yet undesignated) subsection.



sponds to the number of applicants the benchmark figure will not include categories of persons whose emigration has been the subject of discussion between Soviet officials and other European governments.

In agreeing to provide discretionary authority to waive the provisions of subsections designated (a) and (b) in Sec. 402 of Title IV as passed by the House, we share your anticipation of good faith in the implementation of the assurances contained in your letter of Oct. 18 and the understandings conveyed by this letter. In particular, with respect to paragraphs three and four of your letter we wish it to be understood that the enumeration of types of punitive action and unreasonable impediments is not and cannot be considered comprehensive or complete, and that nothing in this exchange of correspondence shall be construed as permitting types of punitive action or unreasonable impediments not enumerated therein.

Finally, in order adequately to verify compliance with the standard set forth in these letters, we understand that communication by telephone, telegraph and post will be permitted.

Sincerely yours,

HENRY M. JACKSON.

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It is the Committee's understanding that the "Freedom of Emigration" amendment in the bill is intended to encourage free emigration of all peoples from all communist countries (and not be restricted to any particular ethnic, racial, or religious group from any one country). Accordingly, each communist country which enters into a bilateral commercial agreement with the United States will be expected to provide reasonable assurances that freedom of emigration will be a realizable goal.

The Committee hopes that this section will provide an incentive to the Soviet Union and other countries to discontinue restrictive emigration practices in the interest of developing economic relations with the United States. The Committee recognizes that segments of the private sector wish the U.S. Government to provide credits, investment guarantees, protection of private property rights, and other conditions before private capital investments are ventured. The Committee believes that it is equally reasonable to establish conditions on all basic human rights, including the right to emigrate as well as basic property rights, before extending broad concessions to communist countries.

#### U.S. PERSONNEL MISSING IN ACTION IN SOUTHEAST ASIA

##### (Section 403)

The purpose of the section is to insure that the communist countries, to which nondiscriminatory treatment and U.S. credit, credit guarantee and investment guarantee programs may be extended, appreciate the importance which the United States attaches to the accounting of U.S. personnel missing in action in Southeast Asia and to secure their cooperation to that end.

Subsection (a) would prohibit the President from extending or continuing nondiscriminatory treatment, government credits, credit

guarantees or investment guarantees, or from entering into bilateral commercial agreements with any affected communist country during any period in which he determined that such country was refusing to cooperate with the United States in its efforts to account for U.S. personnel missing in Southeast Asia, to repatriate such personnel who are alive and to obtain the remains of such personnel who are dead. The inclusion of this subsection should enhance the negotiating leverage of the President not only before, but after nondiscriminatory treatment is extended, to insure continued cooperation from the affected communist countries.

The requirement of periodic reports adopted by the Committee is designed to serve as a reminder of our continuing concern in this regard until the statutory objective has been achieved. In the case of countries now participating in credit, credit guarantee or investment guarantee programs, it is contemplated that, after enactment of this Title, no new credit or guarantee commitments would be made without the requisite report. Existing commitments, on the other hand, could continue to be honored. As under the Freedom of Emigration section, either House of Congress could, by a majority vote, terminate the nondiscriminatory treatment and the bilateral commercial agreement, following receipt of the December report under this section.

The section does not apply to communist countries now eligible for nondiscriminatory treatment (i.e., Poland and Yugoslavia) and, accordingly, is limited to the list of countries referred to in the discussion of Section 401.

#### EXTENSION OF NONDISCRIMINATORY TREATMENT

##### (Section 404)

Section 404 would authorize the President to extend nondiscriminatory treatment to the products of a country with which he has concluded a bilateral commercial agreement meeting the requirements of Section 405, subject to the Congressional approval procedure under Section 405(c). Such treatment could be continued only as long as the period of effectiveness of U.S. obligations to the other country under the commercial agreement. Furthermore, the President would be required to suspend or withdraw such treatment for such period of time as the country is in arrears under an agreement to settle its lend-lease debts to the United States. (Such an agreement, concluded with the USSR in 1972, conditions the Soviet Union's fourth and all subsequent lend-lease settlement payments upon the extension of nondiscriminatory treatment by the U.S.) In addition, the President would be provided general authority under section 404(c) to suspend or withdraw nondiscriminatory treatment accorded any country under this section.

The Committee deleted from the House bill a provision that would have permitted the extension of nondiscriminatory treatment to products of any nonmarket economy country not now receiving such treatment if such country was a member of an appropriate multilateral agreement (the GATT). Deletion of the provision is intended to assure that the United States obtains appropriate benefits for itself, along with adequate safeguards in conjunction with a grant of nondiscriminatory

inatory treatment. The requirement of a bilateral commercial agreement, together with the new requirements in Section 405(b), would assure such benefits and safeguards.

## AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS

### (Section 405)

Subject to the procedures set forth in subsection (c), Section 405 would authorize the President, whenever he determines that it would serve the purposes of the bill and would be in the national interest, to enter into legally-binding bilateral commercial agreements providing for nondiscriminatory treatment to the products of communist countries heretofore denied such treatment and providing, among other things, for balanced concessions with respect to trade and services. In negotiating bilateral commercial agreements contemplated by this section, the Committee recommends that priority be given to certain GATT members, particularly Romania and Hungary.

The Committee believes that it is of the utmost importance that the United States receive, on a continuing basis, mutual advantages for both U.S. goods and services. Services would include nondiscriminatory treatment for U.S. transportation, insurance, banking, and U.S. tourist agencies, among other U.S. service industries.

Subsection 405(b) sets forth certain mandatory requirements for such agreements. Under the provision of subparagraph (1), these agreements could not have an initial term of more than 3 years, but could be renewed by whatever mechanism the parties agree upon for an indefinite number of additional periods (not to exceed 3 years each), if a satisfactory balance of concessions in trade and services has been maintained during the life of the agreement, and if actual or foreseeable U.S. concessions are being satisfactorily reciprocated. The Committee expects, for example, that the benefits of trade concessions extended by the United States in the forthcoming negotiations would be reciprocated, and that no country receiving nondiscriminatory treatment in a bilateral agreement could be given a "free ride". The purpose of the 3-year limit is to provide an opportunity for periodic review of the experience of the parties under the commercial agreement. Such review would include an examination of the balance of concessions, on an overall basis covering the life of the agreement (including all extensions), before the agreement is permitted to be re-extended. If that balance is not satisfactory, it is expected that the agreement would not be extended (or further extended). Such limitations are imposed to assure that the United States would obtain benefits from such country reasonably comparable, although not necessarily of a similar nature, to those it accords.

Subparagraph (2) of section 405(a) would require that the agreement be subject to suspension or termination for national security reasons or that it not limit the right to take any action for the protection of security interests (see, for example, Article 8 of the 1972 U.S.-U.S.S.R. Trade Agreement). Either type formulation is permissible. It is the view of the Committee that this type of provision is especially important in agreements with communist countries.

If any communist country is responsible, directly or indirectly,

for cutting off supplies of vital materials needed for the U.S. economy or encourages aggression against allies or friends of the United States, those actions would clearly be grounds for terminating trade concessions and credits to such country.

Drawing on the consultation procedure and rules of Article 3 and Annex I of the U.S.-U.S.S.R. Trade Agreement as a model, the Committee expanded and made more effective the provision in this paragraph of the House bill dealing with market safeguard arrangements in bilateral commercial agreements.

Paragraph (3) of section 405(b) stipulates that such arrangements must provide for prompt consultations whenever actual or prospective imports cause, threaten to cause, or significantly contribute to market disruption. The agreement must also authorize the imposition of such import restrictions as may be appropriate to prevent such market disruption.

Paragraphs (4) and (5) would require that if the other country is not a party to the Paris Convention for the Protection of Industrial Property, or the Universal Copyright Convention, the agreement must provide U.S. nationals with equivalent rights with respect to patents, trademarks and copyrights. The purpose of these provisions is to assure to American nationals at least the fundamental protections assured by those documents. Paragraph (6) would require that bilateral commercial agreements entered into or renewed after the date of enactment of the bill provide arrangements for protecting industrial property rights and processes (i.e. knowhow as distinguished from patents). This paragraph would not apply to the initial U.S.-U.S.S.R. agreement (see paragraph (8) below).

Paragraph (7) would require the bilateral commercial agreement to provide arrangements for settling commercial differences and disputes. Since commercial transactions themselves will normally be entered into by U.S. nationals (rather than the Government), it would not be appropriate to require a specific, time-consuming form of arbitration or other dispute-settlement procedure. Rather it is intended that the bilateral commercial agreement contain an endorsement by both governments of the principle of independent dispute-settlement mechanisms and the inclusion of undertakings to facilitate such mechanisms.

Paragraph (8) would provide that new bilateral trade agreements contain provisions for the facilitation of trade between the two countries. Such agreements may include provisions dealing with the establishment or expansion of trade and tourist promotion offices; the facilitation of activities of governmental commercial officers; participation in trade fairs and exhibits; the sending of trade missions; and the facilitation of entry, establishment and travel of commercial representatives. Because the 1972 U.S.-U.S.S.R. Trade Agreement does not contain provisions specifically dealing with industrial rights and processes or trade promotion, it was considered desirable to exclude the operation of paragraphs 6 and 8 from that Agreement during its initial period. Otherwise this agreement complies with the requirements of subsection (b) and need not therefore be renegotiated.

Paragraph (9) would require that the bilateral commercial agreement provide for consultations to review the operation of the agreement and relevant aspects of relations between the United States and the other party.

Paragraph (10) makes it clear that a bilateral commercial agreement under Section 405 could contain any other appropriate provision which promotes the purposes of the bill.

The Committee believes that Section 405 would insure that commercial arrangements with communist countries provide benefits to the U.S. private sector and the opportunity to monitor the agreement to make certain it operates in a favorable manner, and that such agreements afford the opportunity to secure any adjustment needed to protect our interests.

In general, a bilateral commercial agreement contemplated by Section 405, and the accompanying proclamations of nondiscriminatory treatment referred to in Section 404(a), would come into effect only if approved by the Congress by the adoption of a concurrent resolution of approval referred to in Section 151. However, clause (2) of subsection (c) of section 405 specifically provides that the 1972 U.S.-U.S.S.R. Trade Agreement and the accompanying proclamation of nondiscriminatory treatment could automatically go into effect if a resolution of disapproval referred to in Section 152 is not adopted during the 90-day period specified in Section 407(c). This latter provision retains the application of the one-House negative veto contained in the House bill to the Soviet agreement.

## MARKET DISRUPTION

### (Section 406)

The purpose of Section 406 is to provide an effective remedy against market disruption caused by imports from communist countries.

The Committee recognizes that a communist country, through control of the distribution process and the price at which articles are sold, could disrupt the domestic markets of its trading partners and thereby injure producers in those countries. In particular, exports from communist countries could be directed so as to flood domestic markets within a shorter time period than could occur under free market condition. In this regard, the Committee has taken into account the problems which East-West trade poses for certain sectors of the American economy. For example, the U.S. watch and clock industry is in a particularly vulnerable position because of East European countries' capacity for penetrating markets with under-priced clocks and watches. When Canada provided most-favored-nation status to communist-bloc countries in the 1960's, low-priced East European clock imports increased dramatically, to the point where sales of such imports surpassed those of domestic Canadian producers. In the face of such imports, traditional unfair trade remedies, such as under the Antidumping Act, have proved inappropriate or ineffective because of the difficulty of their application to products from State-controlled economies.

The Committee is also particularly concerned that the U.S. could become dependent upon Communist countries for vital raw materials such as oil, gas, nickel, chromium, manganese and others. If traditional, dependable suppliers of such materials, whether they are domestic or foreign, are suddenly forced out of business by substantial imports of

such materials from communist countries, it could result in market disruption, or the threat thereof, for the domestic industry either producing or utilizing such articles. For example, the United States has traditionally received the bulk of its imported nickel from Canada. Nickel, like many other materials, is essential to the national defense and economic security of the United States. However, the Soviet Union is the world's second largest producer of nickel (after Canada) and Cuba is now the fourth largest producer. Obviously, the United States cannot afford to become overdependent on the Soviet Union or Cuba for vital materials. Our traditional, dependable suppliers of such materials should be given reasonable assurances that they will be able to compete in our market under fair trade conditions without facing the threat of periodic dumping or other disruptive sales practices. A reasonable quantity of such materials could be imported from communist countries without causing market disruption; and, if the traditional suppliers utilize monopolistic pricing policies, a substantial quantity could be imported without market disruption. The Committee expects the Commission and the President to monitor carefully import trends and to view each case with the goal of preventing imprudent dependence on a nonmarket economy for a vital material.

Section 406, unlike the rest of Title IV, would apply to all communist countries—whether or not they currently receive nondiscriminatory treatment and whether or not they ever receive nondiscriminatory treatment under this Title. The criteria to be applied by the International Trade Commission in determining whether market disruption exists would be liberalized and broadened, beyond the criteria in the House bill, so as to assure that effective action against market disruption or its likelihood will be taken at the earliest possible time. The Committee believes that this section would provide prompt and effective relief in those cases in which imports from communist countries are threatening to cause or are causing material injury to domestic industries.

Section 406, as amended by the Committee, would require the Commission—upon a petition by a trade association, firm, union, or group of workers, upon request by the President or the Special Representative for Trade Negotiations, upon resolution of either the House Committee on Ways and Means or the Senate Committee on Finance, or on its own motion—to initiate an investigation to determine whether market disruption exists in a domestic industry with respect to imports of an article from any communist country, including Poland and Yugoslavia. The Committee believes a traditional supplier of materials to the United States market, even if it be a foreign-owned corporation, should be able to petition the Commission on a market disruption situation. The Commission must reach its determination and publicly report it to the President within three months rather than six months for normal escape clause actions under Title II. If the Commission finds that market disruption or its likelihood exists, it would also report the amount of increase in, or imposition of, any duty or other import restriction on the article that it considers necessary to prevent or remedy the market disruption. The Commission could not, under this provision, recommend adjustment assistance, as it could do under title II of this bill. The Commission would, to the

maximum extent feasible, seek to provide a clear decision, avoiding tie votes and many individual views, on both the market disruption determination and the remedy suggested. Under section 406(b)(1), after an affirmative finding by the Commission, the President must take positive action to remedy the market disruption condition, but could only take action with respect to imports from the country or countries which are found to cause such market disruption.

To assure domestic producers adequate protection against such an event, the Committee, for the purposes of relief action under this section, has amended the House version of the bill to provide that "market disruption exists within a domestic industry whenever an article is being or likely to be imported into the United States in such increased quantities as to be a significant cause of material injury or threat thereof, to such domestic industry." This market disruption definition contained in the Committee bill is formulated along lines similar to the criteria for import relief under section 201 of this bill. However, the market disruption test is intended to be more easily met than the serious injury tests in section 201. While section 201(b) would require that increased imports of the article be a "substantial cause" of the requisite injury, or the threat thereof, to a domestic industry, section 406 would require that the article is being, or is likely to be, imported in such increased quantities as to be a "significant cause" of material injury, or the threat thereof. The term "significant cause" is intended to be an easier standard to satisfy than that of "substantial cause". On the other hand, "significant cause" is meant to require a more direct causal relationship between increased imports and injury than the standard used in the case of worker, firm and community adjustment assistance, i.e., "contribute importantly." In addition, the term "material injury" in section 406 is intended to represent a lesser degree of injury than the term "serious injury" standard employed in section 201.

The increase in imports required by the market disruption criteria must have occurred during a recent period of time, as determined by the Commission taking into account any historical trade levels which may have existed.

In order to make section 406 a more effective instrument for relief from disruptive imports from communist countries, the Committee bill would also authorize the President to take immediate emergency action, without having to wait for an investigation and affirmative finding by the Commission. Specifically, section 406(c) of the bill would direct the President to request the Commission to initiate an investigation, whenever he has reasonable grounds to believe that market disruption exists with respect to imports from a communist country. If the President further finds that emergency action is necessary, he could take action to impose import restrictions under sections 202 and 203, as if an affirmative determination had been made by the Commission under this section. If, after such emergency action, the Commission makes a negative determination, the emergency relief is to cease upon receipt by the President of the Commission report. If the Commission makes an affirmative finding, the emergency measures would continue until the President acts pursuant to such report under the applicable procedures in sections 202 and 203 of the bill.

The bill would also provide for petition by a trade association, firm, union, or group of workers to the Special Trade Representative to initiate consultations in the manner provided for under the safeguard arrangements of any bilateral commercial agreement under this Title. The Office of the Special Trade Representative would be authorized to propose rules governing such petitions and, after receipt of a properly filed petition, the Special Representative would be directed to initiate such consultations if he determines there is a reasonable probability that market disruption (arising from imports of a product from any party to a bilateral agreement under this title) exists in a domestic industry producing a like or directly competitive article.

The Committee expects that the President and the Special Trade Representative will take such action as may be necessary to prevent the United States from becoming overdependent on communist countries for materials essential to our national defense or our domestic economy.

For the purposes of section 406 (not including the consultation procedures), "communist country" means any country dominated or controlled by communism. As indicated earlier, this would apply to communist countries even if they were not listed in headnote 3(e) to the Tariff Schedules of the United States, such as Poland and Yugoslavia.

#### PROCEDURE FOR CONGRESSIONAL APPROVAL OF EXTENSION OR CONTINUANCE OF NONDISCRIMINATION TREATMENT

##### (Section 407)

In the case of an initial extension of nondiscriminatory tariff treatment to the products of a country covered by this Title, the President must submit to Congress a copy of his proclamation extending nondiscriminatory treatment, a copy of the bilateral agreement pursuant to which such treatment is to be extended, and a statement of his reasons for extending such treatment to the country concerned. The proclamation would become effective and the agreement would enter into force only if Congress adopts a concurrent resolution of approval. Special expediting rules governing procedures for dealing with resolutions under Section 407 are contained in Section 151 of the bill.

In the case of reports required by Sections 402(b) (freedom of emigration) and 403(b) (cooperation in locating missing in action), and in the case of the 1972 U.S.-U.S.S.R. Trade Agreement and a proclamation implementing said Agreement, if either House adopts a resolution of disapproval (under the procedures set forth in Section 152) of the continuation, or extension, of nondiscriminatory treatment with respect to products of the country involved, or of government credits, and of government credit and investment guarantees, such treatment, credits, or guarantees would cease (or, in the case of the approval of the U.S.-U.S.S.R. agreement and implementing proclamation, would not go into effect) on the day after the date such resolution is adopted by a majority of those voting of either House of Congress. Nondiscriminatory treatment could not thereafter be extended to the products of such country except in accordance with the provisions of this title.



Under the House bill, nondiscriminatory (MFN) treatment, U.S. Government credits and credit and investment guarantees could not be extended nor could the bilateral agreement go into effect, with respect to a non-market country, during the period in which the President determined that the country was not permitting the free immigration of its citizens. In addition, the House bill provided that the extension of nondiscriminatory treatment and the commercial agreement could not go into effect until submitted to Congress and made subject to the 90 day period for Congressional veto. However, the House bill did not make the extension of Government credits or guarantees subject to a veto by the Congress. The Committee believes that this was an oversight given the fact that the report to the Congress under section 402 required a submission of information relating to the emigration policy of the country concerned. Nondiscriminatory treatment would also be subject to a Congressional veto on an annual basis following the initial extension of such treatment. However, again the House bill did not provide that the extension of Government credits or guarantees should also be made subject to the annual veto procedure. The Committee has amended Section 407 to require that a disapproval of either the original report or the continuation of nondiscriminatory treatment would apply to the extension of credits or guarantees. In the case of credits and guarantees, the veto would cover the extension of any such credits or guarantees after the date of such veto, and not affect those already approved and in effect.

The reports required to be submitted to the Congress under sections 402(b) and 403(b), would be submitted on a semiannual basis. However, the one-House veto procedure described in the preceding paragraph would apply only in the case of the December reports. After receipt of such reports, either House would have 90 days (in which that House was in session) in which to adopt a resolution of disapproval.

These congressional provisions would assure continuing congressional oversight with regard to commercial relations with communist countries.

Section 407 of the House bill directed the President to amend headnote 3(e) of the Tariff Schedules of the United States (TSUS) to reflect changes in the status of tariff treatment to communist countries made pursuant to Title IV. The Committee deleted this provision as being unnecessary, given the general authority provided the President under section 604 of the bill to modify the TSUS in accordance with actions taken under the bill.

#### NONDISCRIMINATORY TREATMENT FOR CZECHOSLOVAKIA CONDITIONED UPON THAT COUNTRY'S PAYMENT OF THE PRINCIPAL BALANCE DUE ON ITS DEBT TO U.S. CITIZENS

(Section 408)

A basic policy of title IV is that, wherever proper and feasible, the United States should strive to obtain fair, beneficial, economic treatment for its citizens in exchange for the granting of nondiscriminatory tariff treatment and other valuable benefits to communist nations. Accordingly section 408 of the bill would provide that Czechoslovakia, which owes U.S. citizens a balance of \$105 million for expro-

priation of their properties in the late 1940's, would not become eligible for most-favored-nation treatment, or for U.S. loans or credits, or for the release of certain gold the U.S. Government has been holding as security for the payment of that expropriation debt, until that country first pays at least the principal amount it owes U.S. citizens (\$64 million).

The Committee conducted two hearings on this section of the legislation during which the Deputy Secretary of State and several other representatives of his department were heard at length. The testimony presented reinforced the Committee's belief that, under title IV, Congress must have the right to review actions the Executive Branch proposes to take to grant valuable new trade and other economic benefits to communist nations, especially when those actions also involve the surrender or settlement of important interests of the United States or its citizens.

In this particular case, the facts developed by the Committee show that when Czechoslovakia became a communist nation shortly after World War II, it expropriated all properties in that country owned by U.S. citizens. No compensation of any kind was provided.

In turn, as a means of ultimately securing payment for these expropriated properties, the U.S. Government —

(i) seized and blocked all assets belonging to Czechoslovakia in this country; and

(ii) announced that, as a member of the Tripartite Commission for the Restitution of Monetary Gold established under the Paris Reparations Agreement of 1946, it would insist that 18.4 metric tons of gold belonging to Czechoslovakia and controlled by that Commission be withheld from Czechoslovakia until the latter compensated our citizens for their expropriated properties.<sup>1</sup>

In 1958, when Czechoslovakia continued to fail to provide compensation, Congress passed Public Law 85-604 which directed the Foreign Claims Settlement Commission to adjudicate the U.S. claims against Czechoslovakia. In addition, Congress created a Czechoslovakian Claims Fund in the Treasury to consist of the net proceeds of sale of certain Czechoslovakian steel mill components the Secretary of the Treasury had previously blocked and sold pursuant to an Executive order issued by the President. Public Law 85-604 provided further that if Czechoslovakia failed voluntarily to pay the outstanding U.S. expropriation claims within a year, the \$9 million fund so established would be used by our Government to provide partial compensation of the U.S. claimants.

Czechoslovakia failed to make any voluntary payments, and the \$9 million fund was utilized by our Government to provide partial compensation. Approximately \$500,000 was consumed in the administration of the fund and the adjudication of the claims, so the net amount finally distributed in 1962 to the U.S. award holders was only \$8.5 million. However, the awards rendered by the Foreign Claims Settle-

<sup>1</sup> Under the terms of the 1946 agreements which created the Tripartite Commission, the Commission's actions must be taken by "unanimous consent of its members." Hence, as one of three members, the U.S. Government's action effectively blocked release of the 18.4 tons of gold to Czechoslovakia. In fact, a major portion of that gold is physically held by our Government here in the United States.

ment Commission totaled \$113.64 million, so after distribution of the \$8.5 million fund, Czechoslovakia was still indebted to our citizens in the sum of \$105 million. That indebtedness remains outstanding today, 25 years after the U.S. properties were originally expropriated.

In the meantime, of course, international conditions have changed. Czechoslovakia, like the Soviet Union and other Communist bloc nations, seeks most-favored-nation treatment under U.S. tariff laws. Title IV of this bill would authorize the granting of that treatment if a bilateral commercial agreement was approved by Congress. It is estimated that this could result in new trade for Czechoslovakia worth hundreds of millions of dollars a year.

Also like the Soviet Union, Czechoslovakia is interested in U.S. loans, grants, credits and guarantees. During the two-year period from 1946 to 1948, before Czechoslovakia became a communist country the United States extended grants and long-term credits to that country totaling \$191 million. No U.S. assistance of any kind has been received by Czechoslovakia since the expropriation of U.S. properties. In the interim, Czechoslovakia's neighbor, Yugoslavia, has received U.S. economic assistance totaling \$2.7 billion, and just last year, the Soviet Union enjoyed favorable U.S. loans and credits in the sum of \$851.2 million.

Moreover, Czechoslovakia wishes to recover the 18.4 metric tons of gold the United States has been holding as security for the payment of its citizens' expropriation awards. That gold has increased in market value from \$20 million in 1946 to approximately \$100 million in 1974.

It was not surprising, therefore, that late last year, with Congress well along the way to passing trade legislation which opens the door to vast new economic benefits, Czechoslovakia suddenly indicated its willingness to negotiate a settlement of the 25-year-old \$105 million expropriation debt it owes citizens of the United States. Plainly, the U.S. negotiating position could not have been more favorable. The blocked gold alone was worth far more than the principal balance owed by Czechoslovakia (\$64 million), and as indicated above, the hundreds of millions of dollars of new annual trade and economic benefits sought by Czechoslovakia were vitally important to that nation.

Unfortunately, however, a proposed draft settlement agreement was initiated in Prague in July 1974 which is completely unacceptable and contrary to the valid interests of the 2,600 citizens of the United States whose properties were expropriated by Czechoslovakia. Essentially, these are the terms of that proposed agreement:

1. The United States should immediately release to Czechoslovakia the 18.4 tons of gold and all other blocked assets it has been holding as security for Czechoslovakia's payment of the \$105 million expropriation debt.

2. Czechoslovakia's \$105 million expropriation debt to citizens of the United States should be fully and finally settled for only \$20.5 million, such sum to be paid in installments over the next 12 years.

3. Upon passage of this legislation, Czechoslovakia would be eligible to apply for most-favored-nation treatment under our tariff laws and for extension of the other important economic benefits described above.

During its presentation to the Committee, the State Department repeatedly contended that this proposed agreement is "the most favorable one we have concluded with the Eastern European countries in the post-war years." That representation is simply not true. Far better settlements were made with Yugoslavia and Bulgaria, the former, for example, having paid 100 cents on the dollar of the amount it owed U.S. citizens for the expropriation of their properties after World War II. Similarly, far more advantageous settlements were made of our citizens' war damage claims against Germany and Italy. And, of course, none of these arrangements involved a long installment payment plan whereby our citizens would finally be paid, without interest of any kind, in 1987 for the properties they lost in 1947—or a plan whereby installment payments are to be made by the debtor nation long after the United States releases all security it presently holds for ultimate payment of the debt.

One-sided agreements of this nature are especially dangerous to the United States and its citizens at this particular time in history when nations in various parts of the world are threatening to expropriate or nationalize U.S. properties worth billions of dollars, while other nations have already taken valuable U.S. holdings without the payment of just compensation. The United States simply cannot afford to proclaim in the face of this trend that expropriations of U.S. properties will quickly be forgotten if the taking nation ultimately offers a relative pittance in return.

Section 408 of the bill therefore seeks to resolve a difficult problem as fairly as possible to both our own citizens and Czechoslovakia as well. It does not prohibit the granting of most-favored-nation status or other economic benefits to the latter. Rather, it provides that those benefits may be extended, but only after Czechoslovakia first pays at least the principal amount (\$64 million) owed on its outstanding \$105 million expropriation debt.

#### EFFECTS ON OTHER LAWS

It is the Committee's intent that nothing in this title should be construed as authorizing sales or transfers which are proscribed under other provisions of the law (for example, the Mutual Defense Assistance Control Act or the Trading With the Enemy Act).



## **Title V.—Generalized System of Preferences**

Title V of the bill would authorize the President to participate with other major developed countries in the granting of generalized tariff preferences to imports from developing countries for a period of 10 years. The bill would require that the President submit a full and complete report to the Congress on the operation of the system within 5 years. The system would provide for duty-free treatment for any article determined to be eligible under the provisions of section 503 imported from any country designated as a beneficiary under the provisions of section 502, subject to the limitations specified in section 504.

### **AUTHORITY TO EXTEND PREFERENCES**

#### **(Section 501)**

Section 501 would provide the President with authority to provide duty free treatment for any eligible article from any beneficiary developing country.

In granting such treatment the President must consider the effect on the economic development of beneficiary countries, the anticipated impact on U.S. domestic producers, and the extent to which other developed countries are making a comparable effort to assist developing countries through the granting of generalized tariff preferences.

### **BENEFICIARY DEVELOPING COUNTRIES**

#### **(Section 502)**

The bill contains several criteria for determining which countries may be designated as beneficiaries of generalized tariff preferences. At present there are several differing definitions of developing countries in use by various U.S. Government agencies and international organizations. Statistical criteria, such as per capita income, are not very satisfactory measures by themselves for distinguishing between various levels of development, since these statistics must be evaluated in the light of other economic factors. A list of developing countries might be rapidly overtaken by changing circumstances. Moreover, inclusion of any country on such a list might imply a right to benefit from generalized preferences. Consequently, no definition or list of developing countries has been included in the bill. However, the Committee understands that, subject to the expressly excluded countries under section 502(b), the countries which will be actively considered for beneficiary status are listed below. This list does not mean that all these countries will automatically receive such preference (for example, all member nations of the Organization of Petroleum Exporting Countries would, subject to section 502(e), be specifically excluded); nor does it mean that others may not be deemed eligible. The

Committee retained the principal features of section 502(a) of the House bill relating to the designation of a country as a beneficiary developing country, but added an amendment to section 502(a)(2) which would require that when the President terminates a country's beneficiary status, he notify such country and the Congress 60 days in advance.

*Countries Which Will Be Actively Considered for GSP Beneficiary Status*

Afghanistan	Malagasy Republic
Algeria (OPEC)	Malawi
Argentina	Malaysia
Bahamas	Maldives Islands
Bahrain	Mali
Bangladesh	Mauritania
Barbados	Mauritius
Bhutan	Mexico
Bolivia	Morocco
Botswana	Nauru
Brazil	Nepal
Burma	Nicaragua
Burundi	Niger
Cameroon	Nigeria (OPEC)
Central African Republic	Oman
Chad	Pakistan
Chile	Panama
Colombia	Paraguay
Congo (Braz)	Peru
Costa Rica	Philippines
Dahomey	Qatar (OPEC)
Dominican Republic	Rwanda
Ecuador (OPEC)	Saudi Arabia (OPEC)
El Salvador	Senegal
Equatorial Guinea	Sierra Leone
Ethiopia	Singapore
Fiji	Somalia
Gabon (OPEC)	South Yemen
Gambia	Sri Lanka (Ceylon)
Ghana	Sudan
Guatemala	Swaziland
Guinea	Syria
Guyana	Taiwan
Haiti	Tanzania
Honduras	Thailand
India	Togo
Indonesia (OPEC)	Tonga
Iran (OPEC)	Trinidad & Tobago
Iraq (OPEC)	Tunisia
Israel	Uganda
Ivory Coast	United Arab Emirates (OPEC)
Jamaica	Upper Volta
Jordan	Uruguay
Kenya	Venezuela (OPEC)
Khmer Republic	Vietnam (South)
Korea (South)	Western Samoa
Kuwait (OPEC)	Yemen
Laos	Yugoslavia
Lesotho	Zaire
Liberia	Zambia
Libya (OPEC)	

## SPECIFIC EXCLUSIONS

*Developed Countries.*—Section 502(b) of the Committee bill, like the House bill, would exclude 26 developed countries from being eligible as beneficiary developing countries. The list is similar to that utilized in the interest equalization tax. Inclusion of this list in the bill does not imply that any other countries would be eligible for generalized tariff preferences.

*Communist Countries.*—The bill would prohibit the granting of generalized tariff preferences to communist countries. The Committee feels it would be inappropriate to grant communist countries more favorable treatment than it extends to any country which has been a traditional supplier and friendly trading partner of long standing. The granting of non-discriminatory tariff treatment to such countries could be provided under the provisions of Title IV of the bill.

*OPEC Countries and Others Withholding Supplies or Charging Monopolistic Prices.*—The bill would prohibit the granting of generalized tariff preferences to any country which is a member of the Organization of Petroleum Exporting Countries (OPEC). It also would prohibit the granting of preferences to member countries of any similar cartel-like arrangement, the effect of which is either to withhold vital materials from the international market or to raise prices of such materials to such a level that serious disruption to the world economy results. This provision would not apply to any country which enters into an agreement with the U.S. pursuant to the negotiating objective contained in Section 108 of the bill, if such agreement assures the United States of the continued availability at reasonable prices of articles important to the requirements of the U.S. economy supplied by such country.

*Countries Which Grant Reverse Preferences.*—Any developing country granting reverse preferential treatment to the imports of a developed country which has or is likely to have a significant adverse effect on U.S. commerce would be denied beneficiary status unless the developing country provides satisfactory assurances that it will eliminate such treatment or take steps to substantially eliminate such adverse effects by January 1, 1976. The Committee understands that Israel, among others, could qualify for beneficiary status under this provision. Beneficiary status granted under such assurances would be withdrawn, subsequently, subject to the conditions of 502(a)(2), if by that date the country did not eliminate the preferential treatment or take steps toward eliminating any significant adverse effects on U.S. trade.

One of the purposes of generalized tariff preferences is to provide an alternative to the proliferation of special preferential trading arrangements between the European Community and the developing countries in Africa, the Caribbean and around the Mediterranean, which often involve "reverse" preferences which discriminate against exports of the United States. This requirement is intended to provide increased pressure on developed and developing countries to remove "reverse" preferences within a reasonable period of time or at least to modify them in such a way that U.S. trade is not adversely affected.



*Countries Which Expropriate U.S. Property Without Payment of Compensation.*—Beneficiary status would not be granted to countries which expropriate U.S. property without also making provisions for prompt, adequate and effective compensation or without entering into bona fide negotiations to provide such compensation in accordance with international law or submitting a dispute over compensation to arbitration. In cases of expropriation, the President must make a determination that the expropriating country has complied with, or is taking the necessary steps to comply with the requirements of this provision and furnish a copy of his determination to both Houses of Congress.

*Countries Which Traffic in Illegal Drugs.*—The bill would also deny beneficiary status to countries which do not take adequate steps to prevent narcotic drugs and other substances controlled by federal law from unlawfully entering the United States. Countries which legally ship such substances to the United States would be affected only to the extent that they also do not take adequate steps to stop or prevent illicit traffic. It is also recognized that in certain countries narcotics traffic is directed from areas controlled by insurgent forces and cannot be prevented by the central government. Such considerations should be taken into account when the President determines whether “adequate steps” are being taken.

*Other Factors To Be Considered in Designating Beneficiary Countries.*—In addition to the mandatory criteria, section 502(c) lists a number of other factors which must be taken into account by the President in designating beneficiary countries. No one of these criteria would be individually controlling on the President. However, they do constitute guidelines and reflect certain of the Committee’s expectations concerning the designation of beneficiary countries. It is expected that a potential beneficiary country will express its desire to be so designated, in accordance with the “self-election” principle which the donor countries of generalized tariff preferences have generally agreed to apply. A potential beneficiary is expected to present a bona fide claim to developing status based on its level of development as defined by appropriate economic indicators. The developed countries have agreed to make their generalized preference systems roughly comparable and, in general, the United States would not expect to give preferential tariff treatment to countries which do not receive such treatment from other donor countries. The United States would expect to receive equitable and reasonable access to the markets and resources of a beneficiary country and assurances or lack thereof along these lines would be taken into account. The Committee feels strongly that beneficiary developing countries should reduce and eliminate their own barriers to U.S. commerce before they should be granted preferential treatment in the U.S. market.

*Insular Possessions.*—General headnote 3(a) of the Tariff Schedules of the United States would be amended to assure that, subject to Sections 503(b)(2) (rules of origin) and 504(c) (competitive need limitations), insular possessions would receive duty treatment no less favorable than that afforded to any country designated a beneficiary in accordance with this title.

This provision is not intended to impair any benefits that these possessions are receiving by reason of headnote 3(a) to the Tariff

Schedules of the United States. The Committee strongly believes that the products of U.S. insular possessions should under no circumstances be treated less advantageously than those of foreign countries. To the extent that such products would be entitled to better treatment under headnote 3(a) than under this title, they should receive treatment under 3(a).

Indeed, in determining eligibility of an article under this title, the President should take into account the extent to which duty-free treatment of such articles from the insular possessions are presently contributing to the economic well-being and development of the insular possessions, and the extent to which such trade would be adversely affected if such articles were to be made eligible for generalized tariff preferences.

*Free Trade Areas and Customs Unions.*—Under section 502(a)(3) of the Committee bill, the President could provide that those members of the same free trade area or customs union which are eligible for individual designation as beneficiary developing countries could be treated as one country for the purposes of this title. It is not expected that the President would so provide unless the member countries requested such treatment. Where an association of countries is designated a beneficiary, exports from all eligible member countries would be treated as exports from one country, both for the purposes of the value-added requirements of the rules of origin in section 503(b) and for the purposes of the competitive need limitations of section 504(c). For these purposes, movement of goods among eligible members of the association prior to their export to the United States is to be disregarded.

Prior to designating any country as a beneficiary developing country, the President must notify both Houses of Congress of his intention and the considerations on which the decision is based. He must also notify both Houses of Congress 60 days before terminating beneficiary status to any country and his reasons for the termination. The affected country must also be notified 60 days in advance to provide adequate time for consultations between the government of the United States and the government of such country on the reasons for termination.

## ELIGIBLE ARTICLES

### (Section 503)

Section 503 contains the procedures and criteria for determining products which may be eligible for duty-free preferential treatment. The "prenegotiation" procedures specified in sections 131 through 134 of this bill would have to be followed prior to granting preferential treatment on any article, as though the act of designating an article as an eligible article under this title were an action affecting rates of duty pursuant to a trade agreement under section 101. These procedures include the advice of the International Trade Commission as to the anticipated economic affect on domestic producers, information and advice from other Government agencies, and public hearings. After receiving the advice of the Commission, the President would publish an Executive Order listing those articles designated as eligible for preferential treatment.

The Committee has received assurances that sensitive products would be excluded from receiving preferences. Ambassador Eberle's letter, reprinted below, indicates that textiles and apparel products subject to the international textile agreement would be excluded, along with footwear, watches, certain steel products, and other sensitive items.

THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS,  
Washington, November 7, 1974.

The Hon. RUSSELL B. LONG,  
*Chairman, Committee on Finance, United States Senate,*  
*Washington, D.C.*

DEAR MR. CHAIRMAN: In his message to Congress accompanying submission of the Trade Reform Act on April 10, 1973, former President Nixon specified certain categories of import-sensitive products intended to be excluded from a generalized system of preferences for articles from eligible developing countries.

In response to questions concerning this Administration's commitment to such exclusions, I reaffirm the intention of the Executive Branch to exclude from tariff preferences textile and apparel products which are subject to textile agreements, footwear products,\* watches, certain steel products and other items which may be considered import-sensitive in the context of generalized preferences.

I note in this connection that the same prenegotiation procedures, including public hearings and advice from the Tariff Commission and from other Executive Departments, which are to be followed for articles subject to negotiated concessions, also are to be observed prior to the designation of any specific articles as eligible for generalized preferences. I assure you that these procedures, including the report of the Tariff Commission on the probable economic effect of granting preferences for any specific article, will be considered in determining whether to grant or deny preferential treatment. I further assure you that the interests of the Commonwealth of Puerto Rico and United States insular possessions will be taken into account in making determinations with respect to sensitive articles.

Yours sincerely,

W. D. EBERLE.

The Committee believes that products which are produced in the Commonwealth of Puerto Rico or in the insular possessions of the United States in significant quantities for export to the United States should be excluded from receiving preferences if the granting of such preferences would have a detrimental effect on the economies of Puerto Rico or the territories.

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\* This refers to the tariff items for footwear which were listed for exclusion from preferences in the 1970 United States Submission to the OECD on Generalized Preferences, i.e., items listed in the Tariff Schedules of the United States Annotated (1970) :

700.05 through 700.27  
700.29 through 700.53  
700.55.23 through 700.55.75  
700.60 through 700.80

The Committee bill would also require the President to consider the Commission's advice on probable economic effect in determining whether to exclude articles which may be sensitive. Such sensitive articles could include those being injured as a result of dumping and those which have been traditionally reserved from trade negotiations.

Before any list of articles to be considered for designation as eligible articles is furnished to the Commission for purposes of its investigation under section 131, an Executive Order would have to be in effect designating beneficiary countries. Your Committee believes that the Commission would not be able to make a sound judgment of the economic impact of preferences on industries producing like or competitive articles unless the Commission were apprised of the list of countries which will receive preferences. At the same time, it is recognized that the list of beneficiary countries may be modified from time to time.

The term "article" would in general refer to the five-digit tariff item numbers of the Tariff Schedules of the United States. Exceptions may be made to this rule if necessary to insure that an article is a coherent product category.

No article would be eligible for duty-free preferential treatment for any period during which it is the subject of any import relief or national security measure under section 203 of this bill or sections 232 or 351 of the Trade Expansion Act, respectively. It could not be designated at any time while such actions are in effect, and if, subsequent to its designation, the President took any import relief or national security action affecting the article, the preference would be terminated. Section 203(f) further provides that if the Commission finds under section 201(b) that serious injury to a domestic industry is resulting from the extension of preferences under this title, the President may terminate the preference without taking other import relief action, if such action would provide an adequate remedy for the injury found.

For purposes of the countervailing duty law, articles entering the United States under preferential treatment would be considered non-dutiable. Thus, such imports will be subject to countervailing duties under the provisions of section 303 of the Tariff Act of 1930, only when injury, or the likelihood thereof is found to exist by the Commission.

To receive preferential treatment, an eligible article must meet specific rules of origin to assure that the benefits of U.S. generalized preferences accrue to the designated beneficiary developing countries. Such articles must be imported directly from a beneficiary developing country into the customs territory of the United States. The value added in the developing country, including the cost or value of materials produced in the developing country and the direct costs of processing operations, must also equal or exceed a minimum percentage of the appraised value of the article at the time of its entry.

This minimum percentage would be 35 percent of the appraised value as prescribed in regulations established by the Secretary of the Treasury and would be uniformly applied to all eligible articles from all beneficiary developing countries, except where two or more eligible member countries of an association treated as one country under section 502(a)(3) have contributed to the value of the article.

In the latter case the minimum percentage would be 50 percent. Imports produced or processed within one member nation of a designated trade association could enter under the 35 percent local value requirement.

## LIMITATIONS ON PREFERENTIAL TREATMENT

### (Section 504)

The President would be authorized to withdraw, suspend, or limit preferences at any time with respect to any article or any beneficiary developing country. In taking such action, the President would be required to consider the factors taken into account in granting preferential treatment initially and in designating beneficiary countries. Withdrawal or suspension of preferential treatment would restore the rate which would apply in the absence of this title; an intermediate rate of duty could not be established. As noted in the GATT waiver authorizing generalized tariff preferences, the United States and the other developed countries agreed that preferences are voluntary and that they do not constitute a binding commitment. Consequently, the withdrawal or suspension of preferential treatment would not give rise to payment of compensation under section 124 of this bill. Nor would the reduction of the general level of tariff rates as the result of bilateral or multilateral trade agreements create in beneficiary countries any right to compensation for the resulting reduced margin of preference.

The President would be required to withdraw or suspend preferential treatment from any country which ceases to be eligible under the requirements of section 502(b). In so doing he would comply with the requirements of section 502(a)(2) (notification of both Houses of Congress and the country affected 60 days in advance).

Duty-free preferential treatment would cease to apply to a particular article from a particular beneficiary developing country if that country has supplied, directly or indirectly, 50 percent or more of the total value, or more than a specified dollar ceiling, of U.S. imports of the article during the latest calendar year. The dollar ceiling would be set at \$25 million for calendar 1975. Each subsequent year the ceiling would increase or decrease by the same percentage as the United States gross national product increased or decreased in the previous year over the base year, 1974. For example, if the gross national product increases by 10 percent in 1975 then the dollar ceiling for 1976 would be \$25 million plus 10 percent of \$25 million or \$27.5 million. In this way the dollar ceiling would reflect both price changes and real growth in the United States economy. The 50 percent ceiling would not apply in the case of articles where no like or directly competitive product is produced in the United States.

If imports of an article eligible for preferences from a beneficiary country reach the 50 percent or dollar ceiling level in any calendar year, the preference on that article from that country would terminate not later than 60 days after the close of the calendar year, unless the President determines before the end of the 60-day period that with respect to that country, there is a history of preferential trade relationships between the United States and the beneficiary developing country, commercial treaties or trade agreements are in force between

the U.S. and the beneficiary country, and the beneficiary nation does not discriminate against or impose unjustifiable or unreasonable barriers to U.S. commerce. At present, the Philippines would meet these criteria and thus could be considered for the waiver on an article by article basis. Should no such waiver be granted for Philippine products, it is estimated that 75-80% of Philippine exports would not be eligible for such preferences. The United States is currently negotiating a Treaty of Economic Cooperation and Development with the Philippine government. That treaty would have to be in force before such a waiver could be granted. The Committee expects that the treaty provide for reciprocal conditions for trade and investment, and that the Philippines not discriminate against or impose unreasonable or unjustifiable barriers to U.S. Commerce. For example, the United States is an efficient producer of sugar machinery and equipment. Yet, the Philippines has not permitted U.S. companies producing such equipment to have competitive access to their market, despite the large U.S. purchases of Philippine sugar. The Committee would expect better treatment for U.S. exports before the limitations on preferences would be waived.

The competitive need formula is in general designed to provide an express requirement governing the withdrawal or suspension of preferential treatment in those cases where it can no longer be justified on grounds of promoting the development of an industry in a particular developing country. This formula would also require the President to withhold the initial granting of preferential treatment to a particular developing country which has already demonstrated its competitiveness in the article in question. The formula is also designed to provide more opportunities to the least developed countries which would not have to compete in the U.S. market on equal terms with highly competitive products exported by more advanced developing countries. It should be noted that the competitive need formula takes into account indirect exports—transshipments, etc.—even though only direct exports could be eligible for preferences under this title.

The Committee bill would add new language to the House bill providing explicitly that preferential treatment, withdrawn by reason of the competitive need limitations, could be restored whenever imports for a subsequent calendar year have fallen below these limitations, provided that the country in question continues to be designated a beneficiary developing country.

Since the bill would authorize the President to grant generalized preferences for a period of 10 years, it is important to monitor the operation of this title and to insure that it fulfills the purposes for which it is intended. Therefore, the bill would require the President to submit a comprehensive report on the operation of the U.S. system of generalized preferences no later than 5 years after enactment of the bill.



## Title VI—General Provisions

Title VI, the general provisions of the bill, would define certain terms of a general nature used throughout the bill, as well as terms having applicability to specific sections of the legislation. The sections in this title would, among other things, specify the relationship of this bill to certain other legislation; provide authorities to the International Trade Commission and the President with respect to information on the operation of trade agreements and resulting changes in the Tariff Schedules of the United States; and include provisions for the development by Treasury, Commerce, and the Commission of uniform statistical data with respect to U.S. imports, exports, and production.

### DEFINITIONS

#### (Section 601)

For purposes of the bill section 601 would provide that the term "duty" shall include both the rate and the form of the import duty, including (but not limited to) tariff-rate quotas. The term "other import restriction" excludes orderly marketing agreements, but includes a limitation, prohibition, charge, or exaction other than a duty that is imposed on, or for the regulation of, imports.

Wherever used, the term "ad valorem" would include "ad valorem equivalent" (AVE) of a specific or compound rate. With respect to the latter, the ad valorem equivalent would consist of the sum of the ad valorem equivalent of the specific rate and of the ad valorem portion of that rate. Throughout the bill, references are made to limitations on the authority of the President to modify duties; in all such cases, these limitations refer to either the ad valorem rate or to the ad valorem equivalents of the duties so defined, as the case may be.

In determining the value of imports for purposes of computing ad valorem equivalents, standards of valuation as contained in section 402 or 402(a) of the Tariff Act of 1930 would be used to the extent practicable. The Committee amended the House bill to require that the ad valorem equivalent of a specific or compound rate be determined on the basis of imports during the most recent representative period. Under Section 601(3) of the House bill, the base period for determining the AVE rate of duty would have been defined to be the most recent period before the date on which a trade agreement is entered into under the bill. The Committee agreed to amend this section so that the base period for determining AVE rates of duty could be moved forward to the earliest representative period of time, which would then coincide with the initiation of negotiations under Title I of the bill. This would permit the Tariff Commission to make its recommendation to the President as to the impact of duty modifica-



tions on the U.S. economy prior to the time any trade agreement offers are made, consistent with the prenegotiation procedures provided for in Title I of the bill.

The term "directly competitive with" a domestic article would refer to an imported article at an earlier or later stage of processing if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of the importation of an article at the same stage of processing as the domestic article. For this purpose, an "unprocessed article" is an article at an earlier stage of processing.

The term "modification," as applied to any duty or other import restriction, would include the elimination of any duty or other import restriction, as well as changes in the existing duty or import restriction.

The term "existing," when used without specifying any date, with respect to any matter relating to entering into or carrying out a trade agreement or other action under the bill, means existing on the day on which such trade agreement is entered into or such other action is taken. When denoting a rate of duty, the term refers to the non-preferential rate, however established and even though temporarily suspended, in column numbered 1 of schedules 1 through 7 of the Tariff Schedules on such day.

A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.

The term "nondiscriminatory treatment" means most-favored-nation treatment.

The term "commerce," when used throughout the bill, includes services associated with international trade.

## RELATIONS TO OTHER LAWS

### (Section 602)

Section 602 would amend other legislation to carry out the intent of the Congress in enacting this bill. Section 602(a) of the bill would amend section 2(a) of the act entitled "An Act to Amend the Tariff Act of 1930" (the 1934 trade agreement legislation), to continue the relationship of trade agreements to section 336 of the Tariff Act of 1930 (equalization of the costs of production) and to the provisions (section 311) of that Act relating to flour manufactured from imported wheat in a bonded warehouse.

Section 242 of the Trade Expansion Act of 1962 would be amended so as to bring the activities of the Interagency Trade Organization into conformity with the relevant provisions of this bill. Section 351(c) (1)(B) of the act of 1962—relating to the termination of temporary "escape clause" actions—is similarly amended. Other provisions of the Trade Expansion Act of 1962, as appropriate, are repealed. To ensure a smooth transition, pertinent provisions of the 1962 Act relating to tariff adjustment and adjustment assistance would continue in effect until the 90th day following the enactment of this act. All provisions of law relating to the trade agreements program, along with agreements entered into, proclamations issued or actions taken thereunder would, unless clearly precluded by the context, be construed to refer also to this legislation.

## INTERNATIONAL TRADE COMMISSION

## (Section 603)

Section 603 would allow the International Trade Commission, in order to expedite the performance of its functions under this legislation, to conduct preliminary investigations, to consolidate proceedings before it, to determine the scope and manner of these proceedings, and to exercise any appropriate authority granted to it under any other act. The Commission would be directed at all times to keep informed concerning the operation and the effect of provisions relating to duties or other import restriction of the United States contained in trade agreements entered into under the trade agreements program.

## CONSEQUENTIAL CHANGES IN THE TARIFF SCHEDULES

## (Section 604)

Section 604 (consequential changes in tariff schedules) would expressly recognize the need to embody in the Tariff Schedules of the United States the substance of the relevant provisions of this and other legislation affecting the customs treatment accorded U.S. imports so that the Tariff Schedules of the United States will promptly and accurately reflect any actions taken affecting such customs treatment. The Committee intends, for example, that any action embodying temporary duty modifications to ameliorate balance-of-payments to restrain inflation, to provide tariff preferences for developing countries, or to extend nondiscriminatory treatment, would be promptly reflected under appropriate sections of, or appendices to the Tariff Schedules.

## SEPARABILITY

## (Section 605)

Section 605 of the act would specify that if any provision therein shall be held to be invalid, the validity of the remainder of the act, and the application of such provisions to other circumstances or persons, shall not thereby be affected.

## INTERNATIONAL DRUG CONTROL

## (Section 606)

The Committee strongly believes that effective international co-operation is necessary to end illicit production of, trafficking in, and abuse of dangerous drugs. Section 606 of the bill would require that the President submit to the Congress at least once each calendar year a report listing the countries in which narcotic drugs and other controlled substances are produced, processed, or transported for unlawful entry into the United States, including a description of the measures such countries are taking to prevent such traffic. Information contained in the Presidential report may be the basis for action by Congress to encourage foreign countries to take action to restrict and eliminate traffic in these illicit products.

## IMMUNITY TO PERSONS ASSOCIATED WITH VOLUNTARY STEEL ARRANGEMENT

### (Section 607)

The provisions of Section 607, requested by the Department of State, relate to the so-called voluntary restraint arrangements for steel under which a number of foreign steel producers first agreed in 1968 voluntarily to restrain exports of steel to the United States. The arrangements, which were renewed in 1972 and which expire at the end of this year, were reached pursuant to an initiative of the United States Government, carried out by the Department of State, following political concern expressed widely in the Congress and at high levels of both the Johnson and Nixon Administrations over the future of the U.S. steel industry in light of increasing foreign steel imports.

In accepting the arrangements, the foreign producers stated their assumption that they did not violate U.S. law. Since that time the arrangements have been the subject of litigation in the federal courts. The Court of Appeals for the District of Columbia recently upheld the authority of the Executive Branch to negotiate the arrangements, but the plaintiff's original allegations that the antitrust laws were violated were dismissed in the district court, thereby technically eliminating antitrust questions from the lawsuit. The foreign steel producers are concerned that, contrary to their expectations, the arrangements could later be held to violate the antitrust laws thus raising the possibility that they may eventually be liable for monetary, including treble, damages and other penalties under federal and state antitrust laws. In light of the reasonable expectations of the foreign steel producers regarding the legitimacy of their actions, and the active role of the U.S. Government in inducing them to enter into the arrangements, the Committee believes that it would be inequitable to subject them to potential monetary damages or other legal penalties.

Section 607 would provide that no person shall be liable for damages, penalties, or other sanctions under the Federal Trade Commission Act or the Antitrust Acts (as defined in section 4 of the Federal Trade Commission Act), or under any similar State law on account of his negotiating, entering into, participating in, or implementing an arrangement providing for the voluntary limitation on exports of steel and steel products to the United States. This provision would be limited to such participation in any such arrangement, or modification or renewal thereof that was undertaken at the request of the Secretary of State or his delegate prior to the enactment of this bill, which ceases to be effective no later than January 1, 1975. This section is not intended to modify the application of the aforementioned laws except to the extent that they may have applicability to the voluntary arrangement described. This section of the Committee's bill is deliberately limited in scope and purpose, and is not intended to be a precedent for the future.

## UNIFORM STATISTICAL DATA ON IMPORTS, EXPORTS, AND PRODUCTION

### (Section 608)

Sections 608 and 609 of the bill are designed to improve the validity and usefulness of U.S. trade data collected and reported.

The United States is moving toward new trade agreements and negotiations at a time when trade issues confronting the free world are complex. As detailed in the first section of this report, world trade has expanded rapidly but unevenly, the role of the multinational corporation has grown sharply, and the U.S. balance-of-trade has steadily declined in the latter half of the 1960's and turned to substantial deficits during the early 1970's.

The best available statistics on U.S. trade are clearly needed in the formulation of a carefully articulated position by the Congress and in negotiations between the United States and other countries. The statistics should be reported in a manner which reflects any changes in the pattern of U.S. trade and which also shows any underlying distortions affecting overall trade such as the utilization of labor by low-wage countries and the proliferation of trading practices that violate commonly acceptable standards for fair trade.

Section 608 of the bill would provide for the amendment of section 484(e) of the Tariff Act of 1930, to authorize the development of uniform, i.e. comparable, trade data with respect to United States imports, exports, and production. This proposed amendment is consistent with the Committee's report on the Trade Act of 1970 in which it expressed concern that the official data collected and published with respect to U.S. trade are not adequate to reflect the current and expanding nature of U.S. foreign trade policy. The Committee urged each of the responsible Government agencies to undertake promptly a review of its statistical programs and to institute methods specifically for the purpose of establishing compatible classification systems for U.S. imports, production, and exports.

Currently, import statistics are collected by the Bureau of Customs and reported to the Bureau of the Census for compilation and publication in accordance with the 7-digit statistical import classifications of the Tariff Schedules of the United States Annotated (TSUSA). These 7-digit classifications are established by the Departments of Treasury and Commerce and the U.S. International Trade Commission under authority of section 484(e) of the Tariff Act of 1930. The bill would amend this section to authorize and direct these agencies to establish an enumeration of articles for the purpose of collecting comparable export statistics beginning on January 1, 1976. The bill would also direct the agencies to establish domestic production statistics which can be easily compared with import and export statistics.

#### SUBMISSION OF STATISTICAL DATA ON IMPORTS AND EXPORTS

##### (Section 609)

Section 609 would direct the U.S. Department of Commerce to submit to the Committee on Ways and Means and to the Committee on Finance, statistics on U.S. imports for consumption and U.S. exports by product and by country, on current monthly and cumulative-to-date bases. Statistics on U.S. imports would be required to be submitted, including the items shown in paragraphs 1 through 7 of this section, in accordance with the descriptions of such items in general statistical headnote 1 of the Tariff Schedules of the United States as follows: par. 1—net quantity, headnote 1(a)(xii); par. 2—U.S. customs value, headnote 1(a)(xiii); par. 3—purchase price or its equivalent.

lent, headnote 1(a)(xiv); par. 4—equivalent of arm's length, headnote 1(a)(xv); and par. 5—aggregate cost from port of exportation to U.S. port of entry, headnote 1(a)(xvi).

In January 1974 the U.S. Customs Service began collecting additional import information. This information is used in various U.S. Department of Commerce publications but at the product level not in sufficient detail for meaningful analysis. The Commerce publication, FT146, is the only document on U.S. imports for consumption which reports by TSUSA product and country, on current and cumulative monthly bases, the customs value, freight-alongside-ship value, cost-insurance-freight value, and the aggregate cost from port of exportation to U.S. port of entry.

The information available in the FT146 is deficient in that it does not separate statistics on imports of related parties from that of unrelated parties, does not show the equivalent of arm's-length value for related party transactions, and does not provide a measure of the extent of trade by related parties where the purchase price differs from the equivalent of arm's-length value. Such information, readily available in the Department of Commerce, is essential for a fuller understanding of the problems affecting U.S. trade.

With respect to U.S. exports, Section 609 would require the Department of Commerce to state, separately from the total value of exports: (1) The value of agricultural commodities exported under the Agricultural Trade Development and Assistance Act of 1954, as amended, and (2) the total amount of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities, and (3) the value of goods exported under the Foreign Assistance Act of 1961.

The requirement of submitting to the Committees more complete data on U.S. imports and exports would facilitate analysis and understanding the balance-of-trade problems confronting the nation.

#### GIFTS SENT FROM INSULAR POSSESSIONS

##### (Section 610)

Section 610 of the bill would amend section 321(a)(2)(A) of the Tariff Act of 1930 to provide that the Secretary of the Treasury is authorized to admit free of duty and of any tax imposed on, or by reason of importation, an aggregate value of articles imported by one person on one day not exceeding \$20, providing such articles are sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa to persons in the United States. The limitation to be applied in case of articles sent from persons in other areas outside the customs territory of the United States would remain at \$10.

#### REVIEW OF PROTESTS ON IMPORT SURCHARGE

##### (Section 611)

Section 611 of the bill would extend the time for review and allowance or denial of a protest under section 514 of the Tariff Act of 1930 from two years from the date the protest was filed to five years from such date in the case of any protest involving the imposition of an import

surcharge in the form of a supplemental duty pursuant to Presidential Proclamation 4074, dated August 17, 1971. This extension would, in effect, represent a limited amendment to section 515(a) of the Tariff Act of 1930. The surcharge under the above Presidential Proclamation 4074 was recently found in the Customs Court to be void as an ultra vires act on the part of the President. That decision was subsequently appealed. This section would permit the resolution of that appeal and any subsequent appeals without denying the thousands of protests already made.

## TRADE AGREEMENTS WITH CANADA

### (Section 612)

The United States and Canada are one another's principal trading partners; the economies of the two nations are interdependent, and conditions necessary for the establishment of a mutually beneficial free trade area are clearly present. The Committee recognizes the difficulties involved in the establishment of a U.S.-Canada free trade area, but believes the rewards of any such arrangement would be well worth the efforts. Section 612 urges the President to seek an agreement that will establish or move toward the establishment of a free trade area with Canada. The Committee strongly feels, however, that any such agreement must provide free trade in both directions. To the extent the authorities contained in the bill are adequate, they may be used for the reduction, elimination or harmonization of tariff barriers in a manner that will work toward the establishment of a free trade area. Any agreement whose implementation would alter U.S. law (or materially change regulations thereunder) would have to be submitted to Congress for approval.

The Committee does not feel that the U.S.-Canadian Automobile Agreement is a reciprocal, two-way free trade arrangement. While the Committee has not amended this bill to terminate U.S. concessions under that agreement, it does feel that the Special Representative for Trade Negotiations should make it a priority item on his agenda to bring about reciprocity and fairness in that agreement. If that is accomplished, the Committee would encourage the Executive to negotiate a broader commercial agreement with Canada providing mutually beneficial market access. Such agreements could encompass not only tariffs, but nontariff barriers and distortions and access to supplies.



## **VI. COSTS OF CARRYING OUT THE BILL AND EFFECT ON THE REVENUES OF THE BILL**

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, the following statement is made relative to the costs to be incurred in carrying out the bill and the effect on the revenues of the bill. The Committee does not expect any immediate impact on revenues from the tariff reducing authority provided in the bill. It is expected that the negotiations authorized by this bill will not be concluded until 1977 at the earliest. Any tariff reductions resulting from these negotiations will not begin to take effect until 1978-1979 and their effect could begin as late as 1981 if the negotiations take up the entire 5 years permitted. If the full authority were used to reduce tariffs (though this is unlikely) the Committee estimates there could be a possible loss of customs revenues of between \$1 and \$3 billion dollars. At the beginning of the reductions, the year after the negotiations are concluded, the revenue loss would be much smaller, since tariff reductions would be staged over a ten year period. This does not take into account the offsetting effect of increased Federal revenues from additional wages and profits which it is hoped will result from the trade negotiations.

Under the worker adjustment assistance program included in the Committee bill, States would be responsible for meeting the basic costs for benefits for which workers would be eligible under existing State unemployment insurance programs. Supplemental benefits provided over and above that level would be paid for by the Federal government. It is estimated that this program would cost the Federal government \$335 million in its first year, assuming 100,000 persons are eligible for benefits. The firm adjustment assistance program is estimated to cost approximately \$25 million in the first year. Grants and loans of up to \$100 million are authorized under the community adjustment assistance program in the first year. The worker, firm, and community programs would expire on September 30, 1980.

The Committee would anticipate that an honest, vigorous enforcement of United States statutes dealing with unfair competitive practices will result in the imposition of antidumping duties and countervailing duties to a greater extent than has been the case in the past when these statutes were not vigorously enforced. Therefore, additional revenues will result from the changes made in Title III of the bill.





## **VII. VOTE OF THE COMMITTEE IN REPORTING THE BILL**

In compliance with section 133 of the Legislative Reorganization Act, as amended, the tabulation of the roll call vote to report the bill is as follows:

In favor—17 (Messrs. Long, Talmadge, Hartke, Fulbright, Ribicoff, Byrd, Jr. of Virginia, Nelson, Mondale, Gravel, Bentsen, Bennett, Curtis, Fannin, Hansen, Dole, Packwood, and Roth), opposed—0.

(239)



## VIII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with subsection 4 of Rule XXIV of the standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

### ANTIDUMPING ACT, 1921

#### DUMPING INVESTIGATION

SEC. 201. (a) Whenever the Secretary of the Treasury (hereinafter called the "Secretary") determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States or elsewhere at less than its fair value, he shall so advise the [United States Tariff Commission] *United States International Trade Commission (hereinafter called the "Commission")*, and the [said] Commission shall determine within three months thereafter whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States. The [said] Commission, after such investigation as it deems necessary, shall notify the Secretary of its determination, and, if that determination is in the affirmative, the Secretary shall make public a notice (hereinafter in this Act called a "finding") of his determination and the determination of the [said] Commission. For the purposes of this subsection, the [said] Commission shall be deemed to have made an affirmative determination if the Commissioners of the [said] Commission voting are evenly divided as to whether its determination should be in the affirmative or in the negative. The Secretary's finding shall include a description of the class or kind of merchandise to which it applies in such detail as he shall deem necessary for the guidance of customs officers.

[(b) Whenever, in the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, the Secretary has reason to believe or suspect, from the invoice or other papers or from information presented to him or to any person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or, in the absence of such value, than the constructed value), he shall forthwith publish notice of that fact in the Federal Register and shall authorize, under such regulations as he may prescribe, the withholding of appraisement reports as to such merchandise entered, or withdrawn from warehouse, for consumption, not more than one hundred and twenty days before the question of

dumping has been raised by or presented to him or any person to whom authority under this section has been delegated, until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subdivision (a) in regard to such merchandise.

[(c) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the United States Tariff Commission, upon making its determination under subsection (a) of this section, shall each publish such determination in the Federal Register, with a statement of the reasons therefor, whether such determination is in the affirmative or in the negative.]

(b)(1) *In the case of any imported merchandise of a class or kind as to which the Secretary has not so made public a finding, he shall, within six months after the publication under subsection (c)(1) of a notice of initiation of an investigation—*

(A) *determine whether there is reason to believe or suspect, from the invoice or other papers or from information presented to him or to any other person to whom authority under this section has been delegated, that the purchase price is less, or that the exporter's sales price is less or likely to be less, than the foreign market value (or in the absence of such value, than the constructed value); and*

(B) *if his determination is affirmative, publish a notice of that fact in the Federal Register, and require, under such regulations as he may prescribe, the withholding of appraisement as to such merchandise entered, or withdrawn from warehouse for consumption, on or after the date of publication of that notice in the Federal Register (or such earlier date, not more than one hundred and twenty days before the date of publication under subsection (c)(1) of notice of initiation of the investigation; as the Secretary may prescribe), until the further order of the Secretary, or until the Secretary has made public a finding as provided for in subsection (a) in regard to such merchandise; or*

(C) *if his determination is negative (or if he tentatively determines that the investigation should be discontinued), publish notice of that fact in the Federal Register.*

(2) *If in the course of an investigation under this subsection the Secretary concludes that the determination provided for in paragraph (1) cannot reasonably be made within six months, he shall publish notice of this in the Federal Register, together with a statement of reasons therefor, in which case the determination shall be made within nine months after the publication in the Federal Register of the notice of initiation of the investigation.*

(3) *Within three months after publication in the Federal Register of an affirmative determination under paragraph (1), the Secretary shall make a final determination whether the foreign merchandise in question is being or is likely to be sold in the United States at less than its fair value.*

(c)(1) *The Secretary shall, within thirty days of the receipt of information alleging that a particular class or kind of merchandise is being or is likely to be sold in the United States or elsewhere at less than its fair value and that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, determine whether to*

initiate an investigation into the question of whether such merchandise in fact is being or is likely to be sold in the United States or elsewhere at less than its fair value. If his determination is affirmative he shall publish notice of the initiation of such an investigation in the Federal Register. If it is negative, the inquiry shall be closed.

(2) If, in the course of making a determination under paragraph (1), the Secretary concludes, from the information available to him, that there is substantial doubt whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, he shall forward to the Commission the reasons for such substantial doubt and a preliminary indication, based upon whatever price information is available, concerning possible sales at less than fair value, including possible margins of dumping and the volume of trade. If within thirty days after receipt of such information from the Secretary, the Commission, after conducting such inquiry as it deems appropriate, determines there is no reasonable indication that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States, it shall advise the Secretary of its determination and any investigation under subsection (b) then in progress shall be terminated.

(d)(1) Before making any determination under subsection (a), the Secretary or the Commission, as the case may be, shall, at the request of any foreign manufacturer or exporter, or any domestic importer, of the foreign merchandise in question, or of any domestic manufacturer, producer, or wholesaler of merchandise of the same class or kind, conduct a hearing at which—

(A) any such person shall have the right to appear by counsel or in person; and

(B) any other person, firm, or corporation may make application and, upon good cause shown, may be allowed by the Secretary or the Commission, as the case may be, to intervene and appear at such hearing by counsel or in person.

(2) The Secretary, upon determining whether foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and the Commission, upon making its determination under subsection (a), shall publish in the Federal Register such determination, whether affirmative or negative, together with a complete statement of findings and conclusions, and the reasons or bases therefor, on all the material issues of fact or law presented (consistent with confidential treatment granted by the Secretary or the Commission, as the case may be, in the course of making its determination).

(3) The hearings provided for under this section shall be exempt from sections 554, 555, 556, 557, and 702 of title 5 of the United States Code. The transcript of any hearing, together with all information developed in connection with the investigation (other than items to which confidential treatment has been granted by the Secretary or the Commission, as the case may be), shall be made available in the manner and to the extent provided in section 552(b) of such title.

\* \* \* \* \*

## PURCHASE PRICE

SEC. 203. **[That for]** *For the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery, in the United States; and [plus] less the amount, if [not] included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation directly upon the [manufacturer, producer, or seller, in respect to the manufacture, production or sale of the merchandise] exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and plus the amount of any taxes rebated or not collected, by reason of the exportation of the merchandise to the United States, which rebate or noncollection has been determined by the Secretary to be a bounty or grant within the meaning of section 303 of the Tariff Act of 1930.*

## EXPORTER'S SALES PRICE

SEC. 204. **[That for the purpose of this title the]** *For the purposes of this title, the exporter's [sales] sale price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any additional costs, charges, and expenses, and United States import duties, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commissions, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, [and] (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States [; and plus the amount of any import duties imposed by the*

country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States], and (5) the amount of any increased value, including additional material and labor, resulting from a process of manufacture or assembly performed on the imported merchandise after the importation of the merchandise and before its sale to a person who is not the exporter of the merchandise within the meaning of section 207; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation; and plus the amount of any taxes rebated, or not collected, by reason of the exportation of the merchandise to the United States, which rebate or noncollection has been determined by the Secretary to be a bounty or grant within the meaning of section 303 of the Tariff Act of 1930.

#### FOREIGN MARKET VALUE

SEC. 205. (a) For the purposes of this title, the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, or if the Secretary determines that the quantity sold for home consumption is so small in relation to the quantity sold for exportation to countries other than the United States as to form an inadequate basis for comparison, then the price at which so sold or offered for sale for exportation to countries other than the United States), plus, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this title no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account. If such or similar merchandise is sold, or, in the absence of sales, offered for sale through a sales agency or other organization related to the seller in any of the respects described in section 207, the prices at which such or similar merchan-



dise is sold or, in the absence of sales, offered for sale by such sales agency or other organization may be used in determining the foreign market value.

(b) *Whenever the Secretary has reasonable grounds to believe or suspect that sales in the home market of the country of exportation, or, as appropriate, to countries other than the United States, have been made at prices which represent less than the cost of producing the merchandise in question, he shall determine whether, in fact, such sales were made at less than the cost of producing the merchandise. If the Secretary determines that sales made at less than the cost of production (1) have been made over an extended period of time and in substantial quantities, and (2) are not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade, such sales shall be disregarded in the determination of foreign market value. Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than cost of production, are determined to be inadequate as a basis for the determination of foreign market value, the Secretary shall determine that no foreign market value exists and employ the constructed value of the merchandise in question.*

(c) *If available information indicates to the Secretary that the economy of the country from which the merchandise is exported is state-controlled to an extent that sales or offers of sales of such or similar merchandise in that country or to countries other than the United States do not permit a determination of foreign market value under subsection (a), the Secretary shall determine the foreign market value of the merchandise on the basis of the normal costs, expenses, and profits as reflected by either—*

*(1) the prices, determined in accordance with subsection (a) and section 202, at which such or similar merchandise of a non-state-controlled-economy country or countries is sold either (A) for consumption in the home market of that country or countries, or (B) to other countries, including the United States; or*

*(2) the constructed value of such or similar merchandise in a non-state-controlled-economy country or countries as determined under section 206.*

(d) *Whenever, in the course of an investigation under this Act, the Secretary determines that—*

*(1) merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;*

*(2) the sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and*

*(3) the foreign market value of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the foreign market value, or if there is no foreign market value, the constructed value, of such or similar merchandise produced in the facilities located in the country of exportation, he may determine the foreign market value of such merchandise by reference to the foreign market value at which such or similar merchandise is sold in*

*substantial quantities by one or more facilities outside the country of exportation. The Secretary in making any determination under this paragraph, shall make adjustments for the difference between the costs of production (including taxes, labor, materials, and overhead) of such or similar merchandise produced in facilities outside the country of exportation and costs of production of such or similar merchandise produced in the facilities in the country of exportation, if such differences are demonstrated to his satisfaction. For the purpose of this subsection, in determining foreign market value of such or similar merchandise produced in a country outside of the country of exportation, the Secretary shall determine its price at the time of exportation from the country of exportation and shall make any adjustments required by section 205(a) for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the country of exportation.*

#### DEFINITIONS

SEC. 212. For the purposes of this title—

(1) The term “sold or, in the absence of sales, offered for sale” means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise, without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

(2) The term “ordinary course of trade” means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise under consideration, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise under consideration.

(3) The term “such or similar merchandise” means merchandise in the first of the following categories in respect of which a determination for the purposes of this title can be satisfactorily made:

(A) The merchandise under consideration and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise under consideration.

[(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise under consideration.]

[(C)] (B) Merchandise (i) produced in the same country and by the same person as the merchandise under consideration, (ii) like the merchandise under consideration in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise under consideration.

[(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.]

[(E)] (C) Merchandise (i) produced in the same country and by the same person and of the same general class or kind as the mer-

chandise under consideration, (ii) like the merchandise under consideration in the purposes for which used, and (iii) which the Secretary or his delegate determines may reasonably be compared for the purposes of this title with the merchandise under consideration.

[(F) Merchandise which satisfies all the requirements of subdivision (E) except that it was produced by another person.]

(4) The term "usual wholesale quantities", in any cases in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volumes sold at the price or prices for any other quantity.

### TARIFF ACT OF 1930

\* \* \* \* \*

#### SEC. 303. COUNTERVAILING DUTIES.

(a) LEVY OF COUNTERVAILING DUTIES.—(1) Whenever any country, dependency, colony, province, or other political subdivision of government, person, partnership, association, cartel, or [corporation shall] *corporation, shall* pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced in such country, dependency, colony, province, or other political subdivision of government, [and such article or merchandise is dutiable under the provisions of this Act,] then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all cases, in addition to the duties otherwise imposed by this Act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. [The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated. The Secretary of the Treasury shall make all regulations he may deem necessary for the identification of such articles and merchandise and for the assessment and collection of such additional duties.]

(2) *In the case of any imported article or merchandise which is free of duty, duties may be imposed under this section only if there is an affirmative determination by the Commission under subsection (b)(1); except that such a determination shall be required only for such time as a determination of injury is required by the international obligations of the United States.*

(3) *In the case of any imported article or merchandise as to which the Secretary of the Treasury (hereafter in this section referred to as the "Secretary") has not determined whether or not any bounty or grant is being paid or bestowed—*

(A) *upon the filing of a petition by any person setting forth his belief that a bounty or grant is being paid or bestowed, and the reasons therefor, or*

(B) whenever the Secretary concludes, from information presented to him or to any person to whom authority under this section has been delegated, that a formal investigation into the question of whether a bounty or grant is being paid or bestowed is warranted into the question of whether a bounty or grant is being paid or bestowed, the Secretary shall initiate a formal investigation to determine whether or not any bounty or grant is being paid or bestowed and shall publish in the Federal Register notice of the initiation of such investigation.

(4) Within six months from the date on which a petition is filed under paragraph (3)(A) or on which notice is published of an investigation initiated under paragraph (3)(B), the Secretary shall make a preliminary determination, and within twelve months from such date shall make a final determination, as to whether or not any bounty or grant is being paid or bestowed.

(5) The Secretary shall from time to time ascertain and determine, or estimate, the net amount of each such bounty or grant, and shall declare the net amount so determined or estimated.

(6) The Secretary shall make all regulations he deems necessary for the identification of articles and merchandise subject to duties under this section and for the assessment and collection of such duties. All determinations by the Secretary under this section, and all determinations by the Commission under subsection (b)(1) (whether affirmative or negative), shall be published in the Federal Register.

(b) **INJURY DETERMINATIONS WITH RESPECT TO DUTY-FREE MERCHANDISE; SUSPENSION OF LIQUIDATION.**—(1) Whenever the Secretary makes a final determination under subsection (a) that a bounty or grant is being paid or bestowed with respect to any article or merchandise which is free of duty and a determination by the Commission is required under subsection (a)(2), he shall—

(A) so advise the Commission, and the Commission shall determine within three months thereafter, and after such investigation as it deems necessary, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States; and the Commission shall notify the Secretary of its determination; and

(B) require, under such regulations as he may prescribe, the suspension of liquidation as to such article or merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of the publication in the Federal Register of his final determination under subsection (a), and such suspension of liquidation shall continue until the further order of the Secretary or until he has made public an order as provided for in paragraph (3).

(2) For the purposes of this subsection, the Commission shall be deemed to have made an affirmative determination if the commissioners voting are evenly divided as to whether its determination should be in the affirmative or in the negative.

(3) If the determination of the Commission under paragraph (1)(A) is in the affirmative, the Secretary shall make public an order directing the assessment and collection of duties in the amount of such bounty or grant as is from time to time ascertained and determined, or estimated, under subsection (a).

(c) **APPLICATION OF AFFIRMATIVE DETERMINATION.**—An affirmative final determination by the Secretary under subsection (a) with respect to any imported article or merchandise shall apply with respect to articles

entered, or withdrawn from warehouse, for consumption on or after the date of the publication in the Federal Register of such determination. In the case of any imported article or merchandise which is free of duty, so long as a finding of injury is required by the international obligations of the United States, the preceding sentence shall apply only if the Commission makes an affirmative determination of injury under subsection (b)(1).

(d) *TEMPORARY PROVISION WHILE NEGOTIATIONS ARE IN PROCESS.*—

(1) It is the sense of the Congress that the President, to the extent practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

(2) If, after seeking information and advice from such agencies as he may deem appropriate, the Secretary of the Treasury determines, at any time during the two-year period beginning on the date of the enactment of the Trade Reform Act of 1974, that—

(A) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

(B) there is a reasonable prospect that, under section 102 of the Trade Reform Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

(C) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardize the satisfactory completion of such negotiations;

the imposition of the additional duty under this section with respect to such article or merchandise shall not be required during such two-year period.

(3) The determination of the Secretary under paragraph (2) may be revoked by him, in his discretion, at any time, and any determination made under such paragraph shall be revoked whenever the basis supporting such determination no longer exists. The additional duty provided under this section shall apply with respect to any affected articles or merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of any revocation under this subsection in the Federal Register.

(e) *REPORTS TO CONGRESS.*—(1) Whenever the Secretary makes a determination under subsection (d)(2) with respect to any article or merchandise, he shall promptly transmit to the House of Representatives and the Senate a document setting forth the determination, together with his reasons therefor.

(2) If, at any time after the copy of the document referred to in paragraph (1) is delivered to the House of Representatives and the Senate, either the House or the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval under the procedures set forth in section 152, then such determination under subsection (d)(2) with respect to such article or merchandise shall have no force or effect beginning with the day after the date of the adoption of such resolution of disapproval, and the additional duty provided under

*this section with respect to such article or merchandise shall apply with respect to articles or merchandise entered, or withdrawn from warehouse, for consumption on or after such day.*

SEC. 1315. EFFECTIVE DATE OF RATES OF DUTY.

(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this chapter or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury, except that—

(1) any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed; and

(2) any article which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation under section 1552 of this title, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the appropriate customs officer under section 1490 of this title, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation.

(b) Any article which has been entered for consumption but which, before release from customs custody, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in section 1001, paragraph 813, and section 1562 of this title (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

(d) No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the weekly Treasury Decisions of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties or the imposition of countervailing duties under section 303.

**SEC. 321. ADMINISTRATIVE EXEMPTIONS.**

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference of less than \$3 between the total estimated duties or taxes deposited, or the total duties or taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties or taxes actually accruing thereon; and

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed—

(A) \$10 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States (\$20, in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa), or

(B) \$10 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under item 812.25 or 813.31 of section 1202 of this title, or

(C) \$1 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2).

(b) The Secretary of the Treasury is authorized by regulations to diminish any dollar amount specified in subsection (a) of this section and to prescribe exceptions to any exemption provided for in such subsection whenever he finds that such action is consistent with the purpose of such subsection or is necessary for any reason to protect the revenue or to prevent unlawful importations. (June 17, 1930, ch. 497, title III, § 321, as added June 25, 1938, ch. 679, § 7, 52 Stat. 1081, and amended Aug. 8, 1953, ch. 397, § 13, 67 Stat. 515; Sept. 21, 1961, Pub. L. 87-261, § 2(c), 75 Stat. 541; June 30, 1965, Pub. L. 89-62, § 2, 79 Stat. 208).

**UNITED STATES INTERNATIONAL TRADE COMMISSION****SEC. 330. ORGANIZATION OF THE COMMISSION.**

(a) **MEMBERSHIP.**—The United States [Tariff] *International Trade Commission* (referred to in this subtitle as the “commission”) shall be composed of six commissioners to be hereafter appointed by the President by and with the advice and consent of the Senate, but each member now in office shall continue to serve until his successor (as designated by the President at the time of nomination) takes office, but in no event for longer than September 16, 1930. No person shall be eligible for appointment as a commissioner unless he is a citizen of the United States, and, in the judgment of the President, is possessed of qualifications requisite for developing expert knowledge of tariff problems and efficiency in administering the provisions of this Part. Not more than three of the commissioners

shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable.

(b) **TERMS OF OFFICE.**—Terms of office of the commissioners *holding [first taking] office on the date of enactment of the Trade Reform Act of 1974 which (but for this sentence) would expire on June 16, 1975, June 16, 1976, June 16, 1977, June 16, 1978, June 16, 1979, and June 16, 1980, [after June 17, 1930] shall expire on June 16, 1976, June 16, 1978, June 16, 1980, June 16, 1982, June 16, 1984, and June 16, 1986, respectively.* [as designated by the President at the time of nomination, one at the end of each of the first six years after June 17, 1930.] The term of office of each commissioner appointed after such date [a successor to any such commissioner] shall expire [six] 14 years from the date of the expiration of the term for which his predecessor was appointed, except that (1) the term of the first commissioner appointed by reason of the increase in the number of commissioners to seven shall expire on June 16, 1988; and (2) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed[,] shall be appointed for the remainder of such term.

(c) **CHAIRMAN AND VICE CHAIRMAN; QUORUM.**—[The] (1) *Except as provided in paragraph (2), the President shall annually designate one of the commissioners as chairman and one as vice chairman of the commission. The vice chairman shall act as chairman in case of the absence or disability of the chairman. A majority of the commissioners in office shall constitute a quorum, but the commission may function notwithstanding vacancies. No commissioner shall actively engage in any other business, vocation, or employment than that of serving as a commissioner.*

(2) Effective on June 17, 1976, the commissioner whose term is first to expire shall serve as chairman during the last 2 years of his term (or, in the case of a commissioner appointed to fill a vacancy occurring in the last 2 years of a term, during the remainder of his term), and the commissioner whose term is second to expire shall serve as vice chairman during the same 2-year period (or, in the case of a commissioner appointed to fill a vacancy occurring during the last 3rd or 4th year of a term, during the remainder of such 2-year period).

**SEC. 332. (g). REPORTS TO PRESIDENT AND CONGRESS.** The commission shall put at the disposal of the President of the United States, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the President or by either of said committees or by either branch of the Congress, and shall report to Congress on the first Monday of December of each year after June 17, 1930, a statement of the methods adopted and all expenses incurred, [and] a summary of all reports made during the year, and a list of all votes taken by the commission during the year, showing those commissioners voting in the affirmative and the negative on each vote and those commissioners not voting on each vote and the reasons for not voting. Each annual report shall include a list of all complaints filed under section 337 during the year for which such report is being made, the date on which each such complaint was



filed, and action taken thereon, and the status of all investigations conducted by the Commission under such section during such year and the date on which each such investigation was commenced.

### SEC. 333. TESTIMONY AND PRODUCTION OF PAPERS

SEC. 333. (c) [Upon the application of the Attorney General of the United States, at] At the request of the commission, any such court shall have jurisdiction to issue writs of mandamus commanding compliance with the provisions of this part or any order of the commission made in pursuance thereof.

\* \* \* \* \*

(g) *The Commission shall be represented in all judicial proceedings by attorneys who are employees of the commission or, at the request of the commission, by the Attorney General of the United States.*

### SEC. 337. UNFAIR PRACTICES IN IMPORT TRADE.

[(a) UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.—Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are hereby declared unlawful, and when found by the President to exist shall be dealt with, in addition to any other provisions of law, as hereinafter provided.

[(b) INVESTIGATIONS OF VIOLATIONS BY COMMISSION.—To assist the President in making any decisions under this section the commission is hereby authorized to investigate any alleged violation hereof on complaint under oath or upon its initiative.

[(c) HEARINGS AND REVIEW.—The commission shall make such investigation and give such notice and afford such hearing, and when deemed proper by the commission such rehearing, with opportunity to offer evidence, oral or written, as it may deem sufficient for a full presentation of the facts involved in such investigation. The testimony in every such investigation shall be reduced to writing, and a transcript thereof with the findings and recommendation of the commission shall be the official record of the proceedings and findings in the case, and in any case where the findings in such investigation show a violation of this section, a copy of the findings shall be promptly mailed or delivered to the importer or consignee of such articles. Such findings, if supported by evidence, shall be conclusive, except that a rehearing may be granted by the commission and except that, within such time after said findings are made and in such manner as appeals may be taken from decisions of the United States Customs Court, an appeal may be taken from said findings upon a question or questions of law only to the United States Court of Customs and Patent Appeals by the importer or consignee of such articles. If it shall be shown to the satisfaction of said court that further evidence should be taken, and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, said court may order such additional evidence to be taken before the

commission in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts or make new findings by reason of additional evidence, which, if supported by evidence, shall be conclusive as to the facts except that within such time and in such manner an appeal may be taken as aforesaid upon a question or questions of law only. The judgment of said court shall be final.

[(d) TRANSMISSION OF FINDINGS TO PRESIDENT.—The final findings of the commission shall be transmitted with the record to the President.]

[(e) EXCLUSION OF ARTICLES FROM ENTRY.—Whenever the existence of any such unfair method or act shall be established to the satisfaction of the President he shall direct that the articles concerned in such unfair methods or acts, imported by any person violating the provisions of this Act, shall be excluded from entry into the United States, and upon information of such action by the President, the Secretary of the Treasury shall, through the proper officers, refuse such entry. The decision of the President shall be conclusive.]

[(f) ENTRY UNDER BOND.—Whenever the President has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section, but has not information sufficient to satisfy him thereof, the Secretary of the Treasury shall, upon his request in writing, forbid entry thereof until such investigation as the President may deem necessary shall be completed; except that such articles shall be entitled to entry by the Secretary of the Treasury.]

[(g) CONTINUANCE OF EXCLUSION.—Any refusal of entry under this section shall continue in effect until the President shall find and instruct the Secretary of the Treasury that the conditions which led to such refusal of entry no longer exist.]

[(h) DEFINITION.—When used in this title, the term "United States" includes the several States and Territories, the District of Columbia, and all possessions of the United States except the Virgin Islands, American Samoa and the island of Guam.]

(a) *UNFAIR METHODS OF COMPETITION DECLARED UNLAWFUL.*—*Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are declared unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provisions of law, as provided in this section.*

(b) *INVESTIGATIONS OF VIOLATIONS BY COMMISSION; TIME LIMITS.*—(1) *The Commission shall investigate any alleged violation of this section on complaint under oath or upon its initiative. Upon commencing any such investigation, the Commission shall publish notice thereof in the Federal Register. The Commission shall conclude any such investigation, and make its determination under this section, at the earliest practicable time, but not later than one year (eighteen months in more complicated cases) after the date of publication of notice of such investigation. The Commission shall publish in the Federal Register its reasons for designating any investigation as a more complicated investigation. For purposes of the one-year and eighteen-month periods prescribed by this subsection, there shall*

be excluded any period of time during which such investigation is suspended because of proceedings in a court or agency of the United States involving similar questions concerning the subject matter of such investigation.

(2) During the course of each investigation under this section, the Commission shall consult with, and seek advice and information from, the Department of Health, Education, and Welfare, the Department of Justice, the Federal Trade Commission, and such other departments and agencies as it considers appropriate.

(3) Whenever, in the course of an investigation under this section, the Commission has reason to believe, based on information before it, that the matter may come within the purview of section 303 or of the Antidumping Act, 1921, it shall promptly notify the Secretary of the Treasury so that such action may be taken as is otherwise authorized by such section and such Act.

(c) **DETERMINATIONS; REVIEW.**—The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5, United States Code. All legal and equitable defenses may be presented, and, in cases based on claims of United States letters patent, defenses based on claims of price gouging may be presented. Any person adversely affected by a final determination of the Commission under subsection (d) or (e) may appeal such determination to the United States Court of Customs and Patent Appeals. Such court shall have jurisdiction to review such determination in the same manner and subject to the same limitations and conditions as in the case of appeals from decisions of the United States Customs Court.

(d) **EXCLUSION OF ARTICLES FROM ENTRY.**—If the Commission determines, as a result of an investigation under this section, that there is violation of this section, it shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall, through the proper officers, refuse such entry.

(e) **EXCLUSION OF ARTICLES FROM ENTRY DURING INVESTIGATION EXCEPT UNDER BOND.**—If, during the course of an investigation under this section, the Commission determines that there is reason to believe that there is a violation of this section, it may direct that the articles concerned, imported by any person with respect to whom there is reason to believe that such person is violating this section, be excluded from entry into the United States, unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. The Commission shall notify the Secretary of the Treasury of its action under this subsection directing such exclusion from entry, and upon receipt of such notice, the Secretary shall,

through the proper officers, refuse such entry, except that such articles shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary.

(f) **CEASE AND DESIST ORDERS.**—In lieu of taking action under subsection (d) or (e), the Commission may issue and cause to be served on any person violating this section, or believed to be violating this section, as the case may be, an order directing such person to cease and desist from engaging in the unfair methods or acts involved, unless after considering the effect of such order upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such order should not be issued. The Commission may at any time, upon such notice and in such manner as it deems proper, modify, or revoke any such order, and, in the case of a revocation, may take action under subsection (d) or (e), as the case may be.

(g) **REFERRAL TO THE PRESIDENT.**—(1) If the Commission determines that there is a violation of this section, or that, for purposes of subsection (e), there is reason to believe that there is such a violation, it shall—

(A) publish such determination in the Federal Register, and

(B) transmit to the President a copy of such determination and the action taken under subsection (d), (e), or (f), with respect thereto, together with the record upon which such determination is based.

(2) If, before the close of the sixty-day period beginning on the day after the day on which he receives a copy of such determination, the President, for policy reasons, disapproves such determination and notifies the Commission of his disapproval, then, effective on the date of such notice, such determination and the action taken under subsection (d), (e), or (f) with respect thereto shall have no force or effect.

(3) Subject to the provisions of paragraph (2), such determination shall, except for purposes of subsection (c), be effective upon publication thereof in the Federal Register, and the action taken under subsection (d), (e), or (f) with respect thereto shall be effective as provided in such subsections, except that articles directed to be excluded from entry under subsection (d) or subject to a cease and desist order under subsection (f) shall be entitled to entry under bond determined by the Commission and prescribed by the Secretary until the determination becomes final pursuant to paragraph (4).

(4) If the President does not disapprove such determination within such sixty day period, or if he notifies the Commission before the close of such period that he approves such determination, then, for purposes of subsection (c), such determination shall become final on the day after the close of such period or the day on which the President notifies the Commission of his approval, as the case may be.

(h) **PERIOD OF EFFECTIVENESS.**—Except as provided in subsections (f) and (g), any exclusion from entry or order under this section shall continue in effect until the Commission finds, and in the case of exclusion from entry notifies the Secretary of the Treasury, that the conditions which led to such exclusion from entry or order no longer exist.

(i) **IMPORTATIONS BY OR FOR THE UNITED STATES.**—Any exclusion from entry or order under subsection (d), (e), or (f), based only on infringement of claims of United States letters patent, shall not apply to any articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent

of the Government. Whenever any article would have been excluded from entry or would have been entered pursuant to the provisions of such subsections but for the operation of this subsection, a patent owner adversely affected shall be entitled to reasonable and entire compensation in an action before the Court of Claims pursuant to the procedures of section 1498 of title 28, United States Code.

(j) *DEFINITION OF UNITED STATES.*—For purposes of this section and sections 338 and 340, the term 'United States' means the customs territory of the United States as defined in general headnote 2 of the *Tariff Schedules of the United States*.

SEC. 481. Invoice; Contents—In General

(a) All invoices of merchandise to be imported into the United States shall set forth—

- (1) The port of entry to which the merchandise is destined;
- (2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;
- (3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;
- (4) the quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;
- (5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;
- (6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;
- (7) The kind of currency, whether gold, silver, or paper;
- (8) All charges upon the merchandise, itemized by name and amount when known to the seller or shipper; or all charges by name (including commissions, insurance, freight, cases, containers, coverings, and cost of packing) included in the invoice prices when the amounts for such charges are unknown to the seller or shipper;
- [(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise; and]
- (9) *All rebates, drawbacks, bounties, and grants, separately itemized, allowed, paid, or bestowed on the exportation, manufacture, or production of the merchandise;*
- (10) *The unit price of each item at which such or similar merchandise is being sold or offered for sale in the home market of the country of exportation; and*

[(10)] (11) Any other facts deemed necessary to a proper appraisal, examination, and classification of the merchandise that the Secretary of the Treasury may require.

(b) SHIPMENTS NOT PURCHASED AND NOT SHIPPED BY MANUFACTURER.—If the merchandise is shipped to a person in the United States by a person other than the manufacturer, otherwise than by purchase, such person shall state on the invoice the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) PURCHASES IN DIFFERENT CONSULAR DISTRICTS.—When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 1482 of this title, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.

(d) EXCEPTIONS BY REGULATIONS.—The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable **[.]**, *except that, with respect to any entry for which an invoice is required, and which covers merchandise other than articles (1) classifiable in schedule 8, Tariff Schedules of the United States (19 U.S.C. 1202); (2) imported for personal use and not for resale; or (3) having a purchase price or value under \$1,000, the information specified in paragraphs (5), (9), and (10) of subsection (a) must be furnished unless the appropriate Customs officer determines that the information required is currently available.*

SEC. 484. **[e]** The Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the United States Tariff Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States, and as a part of the entry there shall be attached thereto or included therein an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and the value of the total quantity of each kind of article. **[.]** (e) *STATISTICAL ENUMERATION.*—*The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.*

**SEC. 516. PETITIONS BY AMERICAN MANUFACTURERS, PRODUCERS, OR WHOLESALERS**

SEC. 516. (a) The Secretary shall, upon written request by an American manufacturer, producer, or wholesaler, furnish the classification, and the rate of duty, if any, imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If such manufacturer, producer, or wholesaler believes that the appraised value is too low, that the classification is not correct, or that the proper rate of duty is not being assessed, he may file a petition with the Secretary setting forth (1) a description of the merchandise, (2) the appraised value, the classification, or the rate or rates of duty that he believes proper, and (3) the reasons for his belief.

(b) If, after receipt and consideration of a petition filed by an American manufacturer, producer, or wholesaler, the Secretary decides that the appraised value of the merchandise is too low, or that the classification of the article or rate of duty assessed thereon is not correct, he shall determine the proper appraised value or classification or rate of duty, and notify the petitioner of his determination. All such merchandise entered for consumption or withdrawn from warehouse for consumption more than thirty days after the date such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised or classified or assessed as to rate of duty in accordance with the Secretary's determination.

(c) If the Secretary decides that the appraised value or classification of the articles or the rate of duty with respect to which a petition was filed pursuant to subsection (a) of this section is correct, he shall so inform the petitioner. If dissatisfied with the decision of the Secretary, the petitioner may file with the Secretary, not later than thirty days after the date of the decision, notice that he desires to contest the appraised value or classification of, or rate or duty assessed upon the merchandise. Upon receipt of notice from the petitioner, the Secretary shall cause publication to be made of his decision as to the proper appraised value or classification or rate of duty and of the petitioner's desire to contest, and shall thereafter furnish the petitioner with such information as to the entries and consignees of such merchandise, entered after the publication of the decision of the Secretary at such ports of entry designated by the petitioner in his notice of desire to contest, as will enable the petitioner to contest the appraised value or classification of, or rate of duty imposed upon, such merchandise in the liquidation of one such entry at such port. The Secretary shall direct the appropriate customs officer at such ports to notify the petitioner by mail immediately when the first of such entries is liquidated.

(d) *Within 30 days after a determination by the Secretary under section 201 of the Antidumping Act, 1921 (19 U.S.C. 160), that a class or kind of foreign merchandise is not being, nor likely to be, sold in the United States at less than its fair value, an American manufacturer, producer, or wholesaler or merchandise of the same class or kind as that described in such determination may file with the Secretary a written notice of a desire to contest such determination. Upon receipt of such notice the Secretary shall cause publication to be made thereof and of such manufacturer's, producer's, or wholesaler's desire to contest the determination. Within*

*30 days after such publication, such manufacturer, producer, or wholesaler may commence an action in the United States Customs Court contesting such determination.*

**[(d)]** (e) Notwithstanding the filing of an action pursuant to section 2632 of Title 28, merchandise of the character covered by the published decision of the Secretary (when entered for consumption or withdrawn from warehouse for consumption on or before the date of publication of a decision of the United States Customs Court or of the United States Court of Customs and Patent Appeals, not in harmony with the published decision of the Secretary) shall be appraised or classified, or both, and the entries liquidated, in accordance with the decision of the Secretary and, except as otherwise provided in this chapter, the final liquidations of these entries shall be conclusive upon all parties.

**[(e)]** (f) The consignee or his agent shall have the right to appear and to be heard as a party in interest before the United States Customs Court.

**[(f)]** (g) If the cause of action is sustained in whole or in part by a decision of the United States Customs Court or of the United States Court of Customs and Patents Appeals, merchandise of the character covered by the published decision of the Secretary, which is entered for consumption or withdrawn from warehouse for consumption after the date of publication of the court decision, shall be subject to appraisement, classification, and assessment of duty in accordance with the final judicial decision in the action, and the liquidation of entries covering the merchandise so entered or withdrawn shall be suspended until final disposition is made of the action, whereupon the entries shall be liquidated, or if necessary, reliquidated in accordance with the final decision.

**[(g)]** (h) Regulations shall be prescribed by the Secretary to implement the procedures required under this section.

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#### SECTION 2(a) OF THE ACT OF JUNE 12, 1934

SEC. 2. (a) Subparagraph (d) of paragraph 369, the last sentence of paragraph 1402, and the provisos to paragraphs 371, 401, 1650, 1687, and 1803(1) of the Tariff Act of 1930 are repealed. The provisions of sections 336 and 516(b) of the Tariff Act of 1930 shall not apply to any article with respect to the importation of which into the United States a foreign trade agreement has been concluded pursuant to this Act or the Trade Expansion Act of 1962 or the Trade Reform Act of 1974, or to any provision of any such agreement. The third paragraph of section 311 of the Tariff Act of 1930 shall apply to any agreement concluded pursuant to this Act or the Trade Expansion Act of 1962 or the Trade Reform Act of 1974 to the extent only that such agreement assures to the United States a rate of duty on wheat flour produced in the United States which is preferential in respect to the lowest rate of duty imposed by the country with which such agreement has been concluded on like flour produced in any other country; and upon the withdrawal of wheat flour from bonded manufacturing warehouses for exportation to the country with which such agreement has been concluded, there shall be levied, collected, and paid on the imported wheat used, a duty equal to the amount of such assured preference.



## TRADE EXPANSION ACT OF 1962

\* \* \* \* \*

**[SEC. 202. LOW-RATE ARTICLES.**

**[**Section 201(b)(1) shall not apply in the case of any article for which the rate of duty existing on July 1, 1962, is not more than 5 percent ad valorem (or ad valorem equivalent). In the case of an article subject to more than one rate of duty, the preceding sentence shall be applied by taking into account the aggregate of such rates.**]**

\* \* \* \* \*

**[SEC. 211. IN GENERAL.**

**[**(a) In the case of any trade agreement with the European Economic Community, section 201(b)(1) shall not apply to articles in any category if, before entering into such trade agreement, the President determines with respect to such category that the United States and all countries of the European Economic Community together accounted for 80 percent or more of the aggregated world export value of all the articles in such category.

**[**(b) For purposes of subsection (a)—

**[**(1) As soon as practicable after the date of the enactment of this Act, the President shall—

**[**(A) after taking into account the availability of trade statistics, select a system of comprehensive classification of articles by category, and

**[**(B) make public his selection of such system.

**[**(2) As soon as practicable after the President has selected a system pursuant to paragraph (1), the Tariff Commission shall—

**[**(A) determine the articles falling within each category of such system, and

**[**(B) make public its determinations.

The determination of the Tariff Commission as to the articles included in any category may be modified only by the Tariff Commission. Such modification by the Tariff Commission may be made only for the purpose of correction, and may be made only before the date on which the first list of articles specifying this section is furnished by the President to the Tariff Commission pursuant to section 221.

**[**(c) For the purpose of making a determination under subsection (a) with respect to any category—

**[**(1) The determination of the countries of the European Economic Community shall be made as of the date of the request under subsection (d).

**[**(2) The President shall determine “aggregated world export value” with respect to any category of articles—

**[**(A) on the basis of a period which he determines to be representative for such category, which period shall be included in the most recent 5-year period before the date of the request under subsection (d) for which statistics are available and shall contain at least 2 one-year periods,

**[**(B) on the basis of the dollar value of exports as shown by trade statistics in use by the Department of Commerce, and

[(C) by excluding exports—

[(i) from any country of the European Economic Community to another such country, and

[(ii) to or from any country or area which, at any time during the representative period, was denied trade agreement benefits under section 231, or under section 5 of the Trade Agreements Extension Act of 1951, or under section 401(a) of the Tariff Classification Act of 1962.

[(d) Before the President makes a determination under subsection (a) with respect to any category, the Tariff Commission shall (upon request of the President) make findings as to—

[(1) the representative period for such category,

[(2) the aggregated world export value of the articles falling within such category, and

[(3) the percentage of the aggregated world export value of such articles accounted for by the United States and the countries of the European Economic Community, and shall advise the President of such findings.

[(e) The exception to section 201(b)(1) provided by subsection (a) shall not apply to any article referred to in Agricultural Handbook No. 143, United States Department of Agriculture, as issued in September 1959.

#### **[SEC. 212. AGRICULTURAL COMMODITIES.**

[In the case of any trade agreement with the European Economic Community, section 201(b)(1) shall not apply to any article referred to in Agricultural Handbook No. 143, United States Department of Agriculture, as issued in September 1959, if before entering into such agreement the President determines that such agreement will tend to assure the maintenance or expansion of United States exports of the like article.

#### **[SEC. 213. TROPICAL AGRICULTURAL AND FORESTRY COMMODITIES.**

[(a) Section 201(b)(1) shall not apply to any article if, before entering into the trade agreement covering such article, the President determines that—

[(1) such article is a tropical agricultural or forestry commodity;

[(2) the like article is not produced in significant quantities in the United States; and

[(3) the European Economic Community has made a commitment with respect to duties or other import restrictions which is likely to assure access for such article to the markets of the European Economic Community which—

[(A) is comparable to the access which such article will have to the markets of the United States, and

[(B) will be afforded substantially without differential treatment as among free world countries of origin.

[(b) For purposes of subsection (a), a "tropical agricultural or forestry commodity" in an agricultural or forestry commodity with respect to which the President determines that more than one-half of the world production is in the area of the world between 20 degrees north latitude and 20 degrees south latitude.

[(c) Before the President makes a determination under subsection (a) with respect to any article, the Tariff Commission shall (upon request of the President) make findings as to—

[(1) whether or not such article is an agricultural or forestry commodity more than one-half of the world production of which is in the area of the world between 20 degrees north latitude and 20 degrees south latitude, and

[(2) whether or not the like article is produced in significant quantities in the United States, and shall advise the President of such findings.

### CHAPTER 3—REQUIREMENTS CONCERNING NEGOTIATIONS

#### SEC. 221. TARIFF COMMISSION ADVICE.

[(a) In connection with any proposed trade agreement under this title, the President shall from time to time publish and furnish the Tariff Commission with lists of articles which may be considered for modification or continuance of United States duties or other import restrictions, or continuance of United States duty-free or excise treatment. In the case of any article with respect to which consideration may be given to reducing the rate of duty below the 50 percent limitation contained in section 201(b)(1), the list shall specify the section or sections of this title pursuant to which such consideration may be given.

[(b) Within 6 months after receipt of such a list, the Tariff Commission shall advise the President with respect to each article of its judgment as to the probable economic effect of modifications of duties or other import restrictions on industries producing like or directly competitive articles, so as to assist the President in making an informed judgment as to the impact that might be caused by such modifications on United States industry, agriculture, and labor.

[(c) In preparing its advice to the President, the Tariff Commission shall, to the extent practicable—

[(1) investigate conditions, causes, and effects relating to competition between the foreign industries producing the articles in question and the domestic industries producing the like or directly competitive articles;

[(2) analyze the production, trade, and consumption of each like or directly competitive article, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production;

[(3) describe the probable nature and extent of any significant change in employment, profit levels, use of productive facilities and such other conditions as it deems relevant in the domestic industries concerned which it believes such modifications would cause; and

[(4) make special studies (including studies of real wages paid in foreign supplying countries), whenever deemed to be war-

ranted, of particular proposed modifications affecting United States industry, agriculture, and labor, utilizing to the fullest extent practicable the facilities of United States attachés abroad and other appropriate personnel of the United States.

[(d) In preparing its advice to the President, the Tariff Commission shall, after reasonable notice, hold public hearings.

#### **[SEC. 222. ADVICE FROM DEPARTMENTS.**

[Before any trade agreement is entered into under this title, the President shall seek information and advice with respect to such agreement from the Departments of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, and from such other sources as he may deem appropriate.

#### **[SEC. 223. PUBLIC HEARINGS.**

[In connection with any proposed trade agreement under this title, the President shall afford an opportunity for any interested person to present his views concerning any article on a list published pursuant to section 221, any article which should be so listed, any concession which should be sought by the United States, or any other matter relevant to such proposed trade agreement. For this purpose, the President shall designate an agency or an interagency committee which shall, after reasonable notice, hold public hearings, shall prescribe regulations governing the conduct of such hearings, and shall furnish the President with a summary of such hearings.

#### **[SEC. 224. PREREQUISITE FOR OFFERS.**

[The President may make an offer for the modification or continuance of any duty or other import restriction, or continuance of duty-free or excise treatment, with respect to any article only after he has received advice concerning such article from the Tariff Commission under section 221(b), or after the expiration of the relevant 6-month period provided for in that section, whichever first occurs, and only after the President has received a summary of the hearings at which an opportunity to be heard with respect to such article has been afforded under section 223.

#### **[SEC. 225. RESERVATION OF ARTICLES FROM NEGOTIATIONS.**

[(a) While there is in effect with respect to any article any action taken under—

[(1) section 232, 351, or 352,

[(2) section 2(b) of the Act entitled "An Act to extend the authority of the President to enter into trade agreements under section 350 of the Tariff Act of 1930, as amended", approved July 1, 1954 (19 U.S.C., sec. 1352a), or

[(3) section 7 of the Trade Agreements Extension Act of 1951 (19 U.S.C., sec. 1364),

the President shall reserve such article from negotiations under this title for the reduction of any duty or other import restriction or the elimination of any duty.

[(b) During the 5-year period which begins on the date of the enactment of this Act, the President shall reserve an article (other than an article which, on the date of the enactment of this Act, was described in subsection (a)(3)) from negotiation under this title for the reduction of any duty or other import restriction or the elimination of any duty where—

[(1) pursuant to section 7 of the Trade Agreements Extension Act of 1951 (or pursuant to a comparable Executive Order), the Tariff Commission found by a majority of the Commissioners voting that such article was being imported in such increased quantities as to cause or threaten serious injury to an industry,

[(2) such article is included in a list furnished to the Tariff Commission pursuant to section 221 (and has not been included in a prior list so furnished), and

[(3) upon request on behalf of the industry, made not later than 60 days after the date of the publication of such list, the Tariff Commission finds and advises the President that economic conditions in such industry have not substantially improved since the date of the report of the finding referred to in paragraph (1).

[(c) In addition to the articles described by subsections (a) and (b), the President shall also so reserve any other article which he determines to be appropriate, taking into consideration the advice of the Tariff Commission under section 221(b), any advice furnished to him under section 222, and the summary furnished to him under section 223.

#### **[SEC. 226. TRANSMISSION OF AGREEMENTS TO CONGRESS.**

[(The President shall transmit promptly to each House of Congress a copy of each trade agreement entered into under this title, together with a statement, in the light of the advice of the Tariff Commission under section 221(b) and of other relevant considerations, of his reasons for entering into the agreement.)]

### **CHAPTER 4—NATIONAL SECURITY**

#### **[SEC. 231. PRODUCTS OF COMMUNIST COUNTRIES OR AREAS.**

[(The President shall, as soon as practicable, suspend, withdraw, or prevent the application of the reduction, elimination, or continuance of any existing duty or other import restriction, or the continuance of any existing duty-free or excise treatment, proclaimed in carrying out any trade agreement under this title or under section 350 of the Tariff Act of 1930, to products, whether imported directly or indirectly, of any country or area dominated or controlled by Communism.)]

\* \* \* \* \*

#### **SEC. 232. SAFEGUARDING NATIONAL SECURITY.**

(a) No action shall be taken pursuant to section 201(a) or pursuant to section 350 of the Tariff Act of 1930 to decrease or eliminate the duty or other import restriction on any article if the President determines that such reduction or elimination would threaten to impair the national security.

(b) Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the [Director of the Office of Emergency Planning] *Secretary of the Treasury* (hereinafter in this section referred to as the ["Director"] "*Secretary*") shall immediately make an appropriate investigation, in the course of which he shall seek information and [advice from other appropriate departments and agencies,] *advice from, and shall consult with, the Secretary of Defense, and other appropriate officers of the United States*

to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion. [If, as a result of such investigation, the Director is of the opinion that the said article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall promptly so advise the President, and, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security as set forth in this section, he shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security.] *The Secretary shall, if it is appropriate and after reasonable notice, hold public hearings or otherwise afford interested parties an opportunity to present information and advice relevant to such investigation. The Secretary shall report the findings of his investigation under this subsection with respect to the effect of the importation of such article in such quantities or under such circumstances upon the national security and, based on such findings, his recommendation for action or inaction under this section to the President within one year after receiving an application from an interested party or otherwise beginning an investigation under this subsection. If the Secretary finds that such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, he shall so advise the President and the President shall take such action, and for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not threaten to impair the national security, unless the President determines that the article is not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.*

(c) For the purposes of this section, the [Director] Secretary and the President shall, in the light of the requirements of national security and without excluding other relevant factors, give consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including the investment, exploration, and development necessary to assure such growth, and the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements. In the administration of this section, the [Director] Secretary and the President shall further recognize the close relation of the economic welfare of the Nation to our national security, and shall take into consideration the impact of foreign competition on the economic welfare of individual domestic industries; and any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports shall be considered, without excluding other factors, in determining whether such weakening of our internal economy may impair the national security.

(d) A report shall be made and published upon the disposition of each request, application, or motion under subsection (b). The **Director** *Secretary* shall publish procedural regulations to give effect to the authority conferred on him by subsection (b).

## CHAPTER 5—ADMINISTRATIVE PROVISIONS

### **SEC. 241. SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS.**

[(a) The President shall appoint, by and with the advice and consent of the Senate, a Special Representative for Trade Negotiations, who shall be the chief representative of the United States for each negotiation under this title and for such other negotiations as in the President's judgment require that the Special Representative be the chief representative of the United States, and who shall be the chairman of the organization established pursuant to section 242(a). The Special Representative for Trade Negotiations shall hold office at the pleasure of the President, shall be entitled to receive the same compensation and allowances as a chief of mission, and shall have the rank of ambassador extraordinary and plenipotentiary.

[(b) The Special Representative for Trade Negotiations shall, in the performance of his functions under subsection (a), seek information and advice with respect to each negotiation from representatives of industry, agriculture, and labor, and from such agencies as he deems appropriate.]

### **SEC. 242. INTERAGENCY TRADE ORGANIZATION.**

(a) The President shall establish an interagency organization to assist him in carrying out the functions vested in him by this title and sections **[351 and 352]** *201, 202, and 203 of the Trade Reform Act of 1974*. Such organization shall, in addition to the Special Representative for Trade Negotiations, be composed of the heads of such departments and of such other officers as the President shall designate. It shall meet at such times and with respect to such matters as the President or the chairman of the organization shall direct. The organization may invite the participation in its activities of any agency not represented in the organization when matters of interest to such agency are under consideration.

(b) In assisting the President, the organization shall—

(1) make recommendations to the President on basic policy issues arising in the administration of the trade agreements program,

(2) make recommendations to the President as to what action, if any, he should take on reports **[with respect to tariff adjustment]** submitted to him by the Tariff Commission under section **[301(e)]** *201(d) of the Trade Reform Act of 1974*,

(3) advise the President of the results of hearings **[concerning foreign import restrictions]** held pursuant to **[section 252(d)]** *subsections (c) and (d) of section 301 of the Trade Reform Act of 1974*, and recommend appropriate action with respect thereto, and

(4) perform such other functions with respect to the trade agreements program as the President may from time to time designate.

(c) The organization shall, to the maximum extent practicable, draw upon the resources of the agencies represented in the organization, as well as such other agencies as it may determine, including the Tariff Commission. In addition, the President may establish by regulation such procedures and committees as he may determine to be necessary to enable the organization to provide for the conduct of hearings pursuant to [section 252(d)] *subsections (c) and (d) of section 301 of the Trade Reform Act of 1974*, and for the carrying out of other functions assigned to the organization pursuant to this section.

#### **[SEC. 243. CONGRESSIONAL DELEGATES TO NEGOTIATIONS.]**

[Before each negotiation under this title, the President shall, upon the recommendation of the Speaker of the House of Representatives, select two members (not of the same political party) of the Committee on Ways and Means, and shall, upon the recommendation of the President of the Senate, select two members (not of the same political party) of the Committee on Finance, who shall be accredited as members of the United States delegation to such negotiation.]

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#### **[SEC. 252. FOREIGN IMPORT RESTRICTIONS.]**

[(a) Whenever unjustifiable foreign import restrictions impair the value of tariff commitments made to the United States, oppress the commerce of the United States, or prevent the expansion of trade on a mutually advantageous basis, the President shall—

[(1) take all appropriate and feasible steps within his power to eliminate such restrictions,

[(2) refrain from negotiating the reduction or elimination of any United States import restriction under section 201(a) in order to obtain the reduction or elimination of any such restrictions, and

[(3) notwithstanding any provision of any trade agreement under this Act and to the extent he deems necessary and appropriate, impose duties or other import restrictions on the products of any foreign country or instrumentality establishing or maintaining such foreign import restrictions against United States agricultural products, when he deems such duties and other import restrictions necessary and appropriate to prevent the establishment or obtain the removal of such foreign import restrictions and to provide access for United States agricultural products to the markets of such country or instrumentality on an equitable basis.

[(b) Whenever a foreign country or instrumentality the products of which receive benefits of trade agreement concessions made by the United States—

[(1) maintains nontariff trade restrictions, including variable import fees, which substantially burden United States commerce in a manner inconsistent with provisions of trade agreements, or

[(2) engages in discriminatory or other acts (including tolerance of international cartels) or policies unjustifiably restricting United States commerce,

the President shall, to the extent that such action is consistent with the purposes of section 102—



[(A) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, or

[(B) refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality.

[(c) Whenever a foreign country or instrumentality, the products of which receive benefits of trade agreement concessions made by the United States, maintains unreasonable import restrictions which either directly or indirectly substantially burden United States commerce, the President may, to the extent that such action is consistent with the purposes of section 102, and having due regard for the international obligations of the United States—

[(1) suspend, withdraw, or prevent the application of benefits of trade agreement concessions to products of such country or instrumentality, or

[(2) refrain from proclaiming benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality.

[(d) The President shall provide an opportunity for the presentation of views concerning foreign import restrictions which are referred to in subsections (a), (b), and (c) and are maintained against United States commerce. Upon request by any interested person, the President shall, through the organization established pursuant to section 242(a), provide for appropriate public hearings with respect to such restrictions after reasonable notice and provide for the issuance of regulations concerning the conduct of such hearings.

#### **[SEC. 253. STAGING REQUIREMENTS.**

[(a) Except as otherwise provided in this section and in section 254, the aggregate reduction in the rate of duty on any article which is in effect on any day pursuant to a trade agreement under this title shall not exceed the aggregate reduction which would have been in effect on such day if—

[(1) one-fifth of the total reduction under such agreement for such article had taken effect on the date of the first proclamation pursuant to section 201(a) to carry out such trade agreement, and

[(2) the remaining four-fifths of such total reduction had taken effect in four equal installments at 1-year intervals after the date referred to in paragraph (1).

[(b) Subsection (a) shall not apply to any article with respect to which the President has made a determination under section 213(a).

[(c) In the case of an article the rate of duty on which has been or is to be reduced pursuant to a prior trade agreement, no reduction shall take effect pursuant to a trade agreement entered into under section 201(a) before the expiration of 1 year after the taking effect of the final reduction pursuant to such prior agreement.

[(d) If any part of a reduction takes effect, then any time thereafter during which such part of the reduction is not in effect by reason of legislation of the United States or action thereunder shall be excluded in determining—

[(1) the 1-year intervals referred to in subsection (a)(2), and

[(2) the expiration of the 1 year referred to in subsection (c)..

**SEC. 254. ROUNDING AUTHORITY.**

【If the President determines that such action will simplify the computation of the amount of duty imposed with respect to an article, he may exceed the limitation provided by section 201(b)(1) or 253 by not more than whichever of the following is lesser:

【(1) the difference between the limitation and the next lower whole number, or

【(2) one-half of 1 percent ad valorem or an amount the ad valorem equivalent of which is one-half of 1 percent.

**SEC. 255. TERMINATION.**

【(a) Every trade agreement entered into under this title shall be subject to termination or withdrawal, upon due notice, at the end of a period specified in the agreement. Such period shall be not more than 3 years from the date on which the agreement becomes effective. If the agreement is not terminated or withdrawn from at the end of the period so specified, it shall be subject to termination or withdrawal thereafter upon not more than 6 months' notice.】

(b) The President may at any time terminate, in whole or in part, any proclamation made under this title.

**SEC. 256. DEFINITIONS.**

【For purposes of this title—

【(1) The term “European Economic Community” means the instrumentality known by such name or any successor thereto.

【(2) The countries of the European Economic Community as of any date shall be those countries which on such date are agreed to achieve a common external tariff through the European Economic Community.

【(3) The term “agreement with the European Economic Community” means an agreement to which the United States and all countries of the European Economic Community (determined as of the date such agreement is entered into) are parties. For purposes of the preceding sentence, each country for which the European Economic Community signs as agreement shall be treated as a party to such agreement.

【(4) The term “existing on July 1, 1962”, as applied to a rate of duty, refers to the lowest nonpreferential rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on such date or (if lower) the lowest nonpreferential rate to which the United States is committed on such date and which may be proclaimed under section 350 of the Tariff Act of 1930.

【(5) The term “existing on July 1, 1934”, as applied to a rate of duty, refers to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on such date.

【(6) The term “existing” without the specification of any date, when used with respect to any matter relating to entering into, or any proclamation to carry out, a trade agreement, means existing on the day on which such trade agreement is entered into, and, when referring to a rate of duty, refers to the rate of duty (however established, and even though temporarily suspended by Act of Congress or otherwise) existing on such day.

[(7) The term "ad valorem equivalent" means the ad valorem equivalent of a specific rate or, in the case of a combination of rates including a specific rate, the sum of the ad valorem equivalent of the specific rate and of the ad valorem rate. The ad valorem equivalent shall be determined by the President on the basis of the value of imports of the article concerned during a period determined by him to be representative. In determining the value of imports, the President shall utilize, to the maximum extent practicable, the standards of valuation contained in section 402 or 402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402) applicable to the article concerned during such representative period.]

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## TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

### CHAPTER 1—ELIGIBILITY FOR ASSISTANCE

#### § 301. TARIFF COMMISSION INVESTIGATIONS AND REPORTS.

[(a) (1) A petition for tariff adjustment under section 351 may be filed with the Tariff Commission by a trade association, firm, certified or recognized union, or other representative of an industry.

[(2) A petition for a determination of eligibility to apply for adjustment assistance under chapter 2 may be filed with the Tariff Commission by a firm or its representative, and a petition for a determination of eligibility to apply for adjustment assistance under chapter 3 may be filed with the Tariff Commission by a group of workers or by their certified or recognized union or other duly authorized representative.

[(3) Whenever a petition is filed under this subsection, the Tariff Commission shall transmit a copy thereof to the Secretary of Commerce.

[(b) (1) Upon the request of the President upon resolution of either the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives, upon its own motion, or upon the filing of a petition under subsection (a)(1), the Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry producing an article which is like or directly competitive with the imported article.

[(2) In making its determination under paragraph (1), the Tariff Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities, inability to operate at a level of reasonable profit, and unemployment or underemployment.

[(3) For purposes of paragraph (1), increased imports shall be considered to cause, or threaten to cause, serious injury to the domestic industry concerned when the Tariff Commission finds that such increased imports have been the major factor in causing, or threatening to cause, such injury.

[(4) No investigation for the purpose of paragraph (1) shall be made, upon petition filed under subsection (a)(1), with respect to the same subject matter as previous investigation under paragraph (1), unless one year has elapsed since the Tariff Commission made its report to the President of the results of such previous investigation.

[(c)(1) In the case of a petition by a firm for a determination of eligibility to apply for adjustment assistance under chapter 2, the Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article like or directly competitive with an article produced by the firm is being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm. In making its determination under this paragraph, the Tariff Commission shall take into account all economic factors which it considers relevant, including idling of productive facilities of the firm, inability of the firm to operate at a level of reasonable profit, and unemployment or underemployment in the firm.

[(2) In the case of a petition by a group of workers for a determination of eligibility to apply for adjustment assistance under chapter 3, the Tariff Commission shall promptly make an investigation to determine whether, as a result in major part of concessions granted under trade agreements, an article like or directly competitive with an article produced by such workers' firm, or an appropriate subdivision thereof, is being imported into the United States in such increased quantities as to cause, or threaten to cause, unemployment or underemployment of a significant number or proportion of the workers of such firm or subdivision.

[(3) For purposes of paragraphs (1) and (2), increased imports shall be considered to cause, or threaten to cause, serious injury to a firm or unemployment or underemployment, as the case may be, when the Tariff Commission finds that such increased imports have been the major factor in causing, or threatening to cause, such injury or unemployment or underemployment.

[(d)(1) In the course of any investigation under subsection (b)(1), the Tariff Commission shall, after reasonable notice, hold public hearings and shall afford interested parties opportunity to be present, to produce evidence, and to be heard at such hearings.

[(2) In the course of any investigation under subsection (c)(1) or (c)(2), the Tariff Commission shall, after reasonable notice, hold public hearings if requested by the petitioner, or if, within 10 days after notice of the filing of the petition, a hearing is requested by any other party showing a proper interest in the subject matter of the investigation, and shall afford interested parties an opportunity to be present, to produce evidence, and to be heard at such hearings.

[(e) Should the Tariff Commission find with respect to any article, as the result of its investigation, the serious injury or threat thereof described in subsection (b), it shall find the amount of the increase in, or imposition of, any duty or other import restriction on such article which is necessary to prevent or remedy such injury and shall include such finding in its report to the President.

[(f)(1) The Tariff Commission shall report to the President the results of each investigation under this section and include in each

report any dissenting or separate views. The Tariff Commission shall furnish to the President a transcript of the hearings and any briefs which may have been submitted in connection with each investigation.

[(2) The report of the Tariff Commission of its determination under subsection (b) shall be made at the earliest practicable time, but not later than 6 months after the date on which the petition is filed (or the date on which the request or resolution is received or the motion is adopted, as the case may be). Upon making such report to the President, the Tariff Commission shall promptly make public such report, and shall cause a summary thereof to be published in the Federal Register.

[(3) The report of the Tariff Commission of its determination under subsection (c)(1) or (c)(2) with respect to any firm or group of workers shall be made at the earliest practicable time, but not later than 60 days after the date on which the petition is filed.

[(g) Except as provided in section 257(e)(3), no petition shall be filed under subsection (a), and no request, resolution, or motion shall be made under subsection (b), prior to the close of the 60th day after the date of the enactment of this Act.

**[SEC. 302. PRESIDENTIAL ACTION AFTER TARIFF COMMISSION DETERMINATION.]**

[(a) After receiving a report from the Tariff Commission containing an affirmative finding under section 301(b) with respect to any industry, the President may—

[(1) provide tariff adjustment for such industry pursuant to section 351 or 352,

[(2) provide, with respect to such industry, that its firms may request the Secretary of Commerce for certifications of eligibility to apply for adjustment assistance under chapter 2,

[(3) provide, with respect to such industry, that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under chapter 3, or

[(4) take any combination of such actions.

[(b)(1) The Secretary of Commerce shall certify, as eligible to apply for adjustment assistance under chapter 2, any firm in an industry with respect to which the President has acted under subsection (a)(2), upon a showing by such firm to the satisfaction of the Secretary of Commerce that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused serious injury or threat thereof to such firm.

[(2) The Secretary of Labor shall certify, as eligible to apply for adjustment assistance under chapter 3, any group of workers in an industry with respect to which the President has acted under subsection (a)(3), upon a showing by such group of workers to the satisfaction of the Secretary of Labor that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused or threatened to cause unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof.

[(c) After receiving a report from the Tariff Commission containing an affirmative finding under section 301(c) with respect to any

firm or group of workers, the President may certify that such firm or group of workers is eligible to apply for adjustment assistance.

[(d) Any certification under subsection (b) or (c) that a group of workers is eligible to apply for adjustment assistance shall specify the date on which the unemployment or underemployment began or threatens to begin.

[(e) Whenever the President determines, with respect to any certification of the eligibility of a group of workers, that separations from the firm or subdivision thereof are no longer attributable to the conditions specified in section 301(c)(2) or in subsection (b)(2) of this section, he shall terminate the effect of such certification. Such termination shall apply only with respect to separations occurring after the termination date specified by the President.]

## CHAPTER 2—ASSISTANCE TO FIRMS

### [SEC. 311. CERTIFICATION OF ADJUSTMENT PROPOSALS.

[(a) A firm certified under section 302 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary of Commerce for adjustment assistance under this chapter. Within a reasonable time after filing its application, the firm shall present a proposal for its economic adjustment.

[(b) Adjustment assistance under this chapter consists of technical assistance, financial assistance, and tax assistance, which may be furnished singly or in combination. Except as provided in subsection (c), no adjustment assistance shall be provided to a firm under this chapter until its adjusted proposal shall have been certified by the Secretary of Commerce—

[(1) to be reasonably calculated materially to contribute to the economic adjustment of the firm,

[(2) to give adequate consideration to the interests of the workers of such firm adversely affected by actions taken in carrying out trade agreements, and

[(3) to demonstrate that the firm will make all reasonable efforts to use its own resources for economic development.

[(c) In order to assist a firm which has applied for adjustment assistance under this chapter in preparing a sound adjustment proposal, the Secretary of Commerce may furnish technical assistance to such firm prior to certification of its adjustment proposal.

[(d) Any certification made pursuant to this section shall remain in force only for such period as the Secretary of Commerce may prescribe.

### [SEC. 312. USE OF EXISTING AGENCIES.

[(a) The Secretary of Commerce shall refer each certified adjustment proposal to such agency or agencies as he determines to be appropriate to furnish the technical and financial assistance necessary to carry out such proposal.

[(b) Upon receipt of a certified adjustment proposal, each agency concerned shall promptly—

[(1) examine the aspects of the proposal relevant to its functions, and

[(2) notify the Secretary of Commerce of its determination as to the technical and financial assistance it is prepared to furnish to carry out the proposal.

[(c) Whenever and to the extent that any agency to which an adjustment proposal has been referred notifies the Secretary of Commerce of its determination not to furnish technical or financial assistance, and if the Secretary of Commerce determines that such assistance is necessary to carry out the adjustment proposal, he may furnish adjustment assistance under sections 313 and 314 of the firm concerned.

[(d) There are hereby authorized to be appropriated to the Secretary of Commerce such sums as may be necessary from time to time to carry out his functions under this chapter in connection with furnishing adjustment assistance to firms, which sums are authorized to be appropriated to remain available until expended.

#### **[SEC. 313. TECHNICAL ASSISTANCE.**

[(a) Upon compliance with section 312(c) the Secretary of Commerce may provide to a firm, on such terms and conditions as he determines to be appropriate, such technical assistance as in his judgment will materially contribute to the economic adjustment of the firm.

[(b) To the maximum extent practicable, the Secretary of Commerce shall furnish technical assistance under this section and section 311(c) through existing agencies, and otherwise through private individuals, firms, or institutions.

[(c) The Secretary of Commerce shall require a firm receiving technical assistance under this section or section 311(c) to share the cost thereof to the extent he determines to be appropriate.

#### **[SEC. 314. FINANCIAL ASSISTANCE.**

[(a) Upon compliance with section 312(c), the Secretary of Commerce may provide to a firm, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of guarantees of loans, agreements for deferred participations in loans, or loans, as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

[(b) Guarantees, agreements for deferred participation, or loans shall be made under this section only for the purpose of making funds available to the firm—

[(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

[(2) in cases determined by the Secretary of Commerce to be exceptional, to supply working capital.

[(c) To the maximum extent practicable, the Secretary of Commerce shall furnish financial assistance under this section through agencies furnishing financial assistance under other law.

#### **[SEC. 315. CONDITIONS FOR FINANCIAL ASSISTANCE.**

[(a) No loan shall be guaranteed and no agreement for deferred participation in a loan shall be made by the Secretary of Commerce in an amount which exceeds 90 percent of that portion of the loan made for purposes specified in section 314(b).

[(b)(1) Any loan made or deferred participation taken up by the Secretary of Commerce shall bear interest at a rate not less than the greater of—

[(A) 4 percent per annum, or

[(B) a rate determined by the Secretary of the Treasury for the year in which the loan is made or the agreement for such deferred participation is entered into.

[(2) The Secretary of the Treasury shall determine annually the rate referred to in paragraph (1)(B), taking into consideration the current average market yields on outstanding interest-bearing marketable public debt obligations of the United States of maturities comparable to those of the loans outstanding under section 314.

[(c) Guarantees or agreements for referred participation shall be made by the Secretary of Commerce only with respect to loans bearing interest at a rate which he determines to be reasonable. In no event shall the guaranteed portion of any loan, or the portion covered by an agreement for deferred participation, bear interest at a rate more than 1 percent per annum above the rate prescribed by subsection (b) (determined when the guarantee is made or the agreement is entered into), unless the Secretary of Commerce shall determine that special circumstances justify a higher rate, in which case such portion of the loan shall bear interest at a rate not more than 2 percent per annum above such prescribed rate.

[(d) The Secretary of Commerce shall make no loan or guarantee having a maturity in excess of 25 years, including renewals and extensions, and shall make no agreement for deferred participation in a loan which has a maturity in excess of 25 years, including renewals and extensions. Such limitation on maturities shall not, however, apply to—

[(1) securities or obligations received by the Secretary of Commerce as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

[(2) an extension or renewal for an additional period not exceeding 10 years, if the Secretary of Commerce determines that such extension or renewal is reasonably necessary for the orderly liquidation of the loan.

[(e) No financial assistance shall be provided under section 314 unless the Secretary of Commerce determines that such assistance is not otherwise available to the firm, from sources other than the United States, on reasonable terms, and that there is reasonable assurance of repayment by the borrower.

[(f) The Secretary of Commerce shall maintain operating reserves with respect to anticipated claims under guarantees and under agreements for deferred participation made under section 314. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C., sec. 200).]

#### SEC. 316. ADMINISTRATION OF FINANCIAL ASSISTANCE.

(a) In making and administering guarantees, agreements for deferred participation, and loans under section 314, the Secretary of Commerce may—



(1) require security for any such guarantee, agreement, or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees, agreements, or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees, agreements, or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees, agreements, or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 314.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

#### SEC. 317. TAX ASSISTANCE.

[(a) If—

[(1) to carry out an adjustment proposal of a firm certified pursuant to section 311, such firm applies for tax assistance under this section within 24 months after the close of a taxable year and alleges in such application that it has sustained a net operating loss for such taxable year,

[(2) the Secretary of Commerce determines that any such alleged loss for such taxable year arose predominantly out of the carrying on of a trade or business which was seriously injured, during such year, by the increased imports which the Tariff Commission has determined to result from concessions granted under trade agreements, and

[(3) the Secretary of Commerce determines that tax assistance under this section will materially contribute to the economic adjustment of the firm,

then the Secretary of Commerce shall certify such determinations with respect to such firm for such taxable year. No determination or certification under this subsection shall constitute a determination of the existence or amount of any net operating loss for purposes of section 172 of the Internal Revenue Code of 1954.】

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#### CHAPTER 3—ASSISTANCE TO WORKERS

##### 【SEC. 321. AUTHORITY.

【The Secretary of Labor shall determine whether applicants are entitled to receive assistance under this chapter and shall pay or provide such assistance to applicants who are so entitled.】

## Subchapter A—Trade Readjustment Allowances

### **SEC. 322. QUALIFYING REQUIREMENTS.**

[(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker who applies for such allowance for any week of unemployment which begins after the 30th day after the date of the enactment of this Act and after the date determined under section 302(d), subject to the requirements of subsections (b) and (c).

[(b) Total or partial separation shall have occurred—

[(1) after the date of the enactment of this Act, and after the date determined under section 302(d), and

[(2) before the expiration of the 2-year period beginning on the day on which the most recent determination under section 302(d) was made, and before the termination date (if any) specified under section 302(e).

[(c) Such worker shall have had—

[(1) in the 156 weeks immediately preceding such total or partial separation, at least 78 weeks of employment at wages of \$15 or more a week, and

[(2) in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of \$15 or more a week in a firm or firms with respect to which a determination of unemployment or underemployment under section 302 has been made, or

if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary of Labor.

### **SEC. 323. WEEKLY AMOUNTS.**

[(a) Subject to the other provisions of this section, the trade readjustment allowance payable to an adversely affected worker for a week of unemployment shall be an amount equal to 65 percent of his average weekly wage or to 65 percent of the average weekly manufacturing wage, whichever is less, reduced by 50 percent of the amount of his remuneration for services performed during such week.

[(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved by the Secretary of Labor, including on-the-job training, shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

[(c) The amount of trade readjustment allowance payable to an adversely affected worker under subsection (a) or (b) for any week shall be reduced by any amount of unemployment insurance which he has received or is seeking with respect to such week; but, if the appropriate State or Federal agency finally determines that the worker was not entitled to unemployment insurance with respect to such week, the reduction shall not apply with respect to such week.

[(d) If unemployment insurance, or a training allowance under the Manpower Development and Training Act of 1962 or the Area Re-

development Act, is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to subsection (c) or (e) or to any disqualification under section 327) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 324(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If the unemployment insurance or the training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

[(e) Whenever, with respect to any week of unemployment, the total amount payable to an adversely affected worker as remuneration for services performed during such week, as unemployment insurance, as a training allowance referred to in subsection (d), and as a trade readjustment allowance would exceed 75 percent of his average weekly wage, his trade readjustment allowance for such week shall be reduced by the amount of such excess.

[(f) The amount of any weekly payment to be made under this section which is not a whole dollar amount shall be rounded upward to the next higher whole dollar amount.

[(g)(1) If unemployment insurance is paid under a State law to an adversely affected worker for a week for which—

[(A) he receives a trade readjustment allowance, or

[(B) he makes application for a trade readjustment allowance and would be entitled (determined without regard to subsection (c) or (e)) to receive such allowance,

the State agency making such payment shall, unless it has been reimbursed for such payment under other Federal law, be reimbursed from funds appropriated pursuant to section 337, to the extent such payment does not exceed the amount of the trade readjustment allowance which such worker would have received, or would have been entitled to receive, as the case may be, if he had not received the State payment. The amount of such reimbursement shall be determined by the Secretary of Labor on the basis of reports furnished to him by the State agency.

[(2) In any case in which a State agency is reimbursed under paragraph (1) for payments of unemployment insurance made to an adversely affected worker, such payments, and the period of unemployment of such worker for which such payments were made, may be disregarded under the State law (and for purposes of applying section 3303 of the Internal Revenue Code of 1954) in determining whether or not an employer is entitled to a reduced rate of contributions permitted by the State law.

#### **[SEC. 324. TIME LIMITATIONS ON TRADE READJUSTMENT ALLOWANCES.**

[(a) Payment of trade readjustment allowances shall not be made to an adversely affected worker for more than 52 weeks, except that, in accordance with regulations prescribed by the Secretary of Labor—

[(1) such payments may be made for not more than 26 additional weeks to an adversely affected worker to assist him to complete training approved by the Secretary of Labor, or

[(2) such payments shall be made for not more than 13 additional weeks to an adversely affected worker who had reached his 60th birthday on or before the date of total or partial separation.

[(b) Except for a payment made for an additional week specified in subsection (a), a trade readjustment allowance shall not be paid for a week of unemployment beginning more than 2 years after the beginning of the appropriate week. A trade readjustment allowance shall not be paid for any additional week specified in subsection (a) if such week begins more than 3 years after the beginning of the appropriate week. The appropriate week for a totally separated worker is the week of his most recent total separation. The appropriate week for a partially separated worker is the week in respect of which he first receives a trade readjustment allowance following his most recent partial separation.

#### **[SEC. 325. APPLICATION OF STATE LAWS.]**

[Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary of Labor may prescribe, the availability and disqualification provisions of the State law—

[(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

[(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated,

shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).]

### **Subchapter B—Training**

#### **[SEC. 326. IN GENERAL]**

[(a) To assure that the readjustment of adversely affected workers shall occur as quickly and effectively as possible, with minimum reliance upon trade readjustment allowances under this chapter, every effort shall be made to prepare each such worker for full employment in accordance with his capabilities and prospective employment opportunities. To this end, and subject to this chapter, adversely affected workers shall be afforded, where appropriate, the testing, counseling, training, and placement services provided for under any Federal law. Such workers may also be afforded supplemental assistance necessary to defray transportation and subsistence expenses for separate maintenance when such training is provided in facilities which are not within commuting distance of their regular place of residence. The Secretary of Labor in defraying such subsistence expenses shall not afford any individual an allowance exceeding \$5 a day; nor shall the Secretary authorize any transportation expense exceeding the rate of 10 cents per mile.

[(b) To the extent practicable, before adversely affected workers are referred to training, the Secretary of Labor shall consult with such workers' firm and their certified or recognized union or other duly authorized representative and develop a worker retraining plan which provides for training such workers to meet the manpower needs of such firm, in order to preserve or restore the employment relationship between the workers and the firm.]

**[SEC. 327. DISQUALIFICATION FOR REFUSAL OF TRAINING, ETC.]**

Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he has been referred by the Secretary of Labor shall not thereafter be entitled to trade readjustment allowances until he enters or resumes training to which he has been so referred.】

**Subchapter C—Relocation Allowances**

**[SEC. 328. RELOCATION ALLOWANCES AFFORDED.]**

Any adversely affected worker who is the head of a family as defined in regulations prescribed by the Secretary of Labor and who has been totally separated may file an application for a relocation allowance, subject to the terms and conditions of this subchapter.

**[SEC. 329. QUALIFYING REQUIREMENTS.]**

[(a) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary of Labor determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

    [(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

    [(2) has obtained a bona fide offer of such employment.]

[(b) A relocation allowance shall not be granted to such worker unless—

    [(1) for the week in which the application for such allowance is filed, he is entitled (determined without regard to section 323 (c) and (e)) to a trade readjustment allowance or would be so entitled (determined without regard to whether he filed application therefor) but for the fact that he has obtained the employment referred to in subsection (a)(1), and

    [(2) such relocation occurs within a reasonable period after the filing of such application or (in the case of a worker who has been referred to training by the Secretary of Labor) within a reasonable period after the conclusion of such training.]

**[SEC. 330. RELOCATION ALLOWANCE DEFINED.]**

For purposes of this subchapter, the term "relocation allowance" means—

    [(1) the reasonable and necessary expenses, as specified in regulations prescribed by the Secretary of Labor, incurred in transporting a worker and his family and their household effects, and

    [(2) a lump sum equivalent to two and one-half times the average weekly manufacturing wage.】

## Subchapter D—General Provisions

**§SEC. 331. AGREEMENTS WITH STATES.**

[(a) The Secretary of Labor is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency. Under such an agreement, the State agency (1) as agent of the United States, will receive applications for, and will provide, assistance on the basis provided in this chapter, (2) where appropriate, will afford adversely affected workers who apply for assistance under this chapter testing, counseling, referral to training, and placement services, and (3) will otherwise cooperate with the Secretary of Labor and with other State and Federal agencies in providing assistance under this chapter.

[(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

[(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to allowances under this chapter.

**§SEC. 322. PAYMENTS TO STATES.**

[(a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has entered into an agreement under section 331(1) the sums necessary to enable such State as agent of the United States to make payments of allowances provided for by this chapter, and (2) the sums reimbursable to a State pursuant to section 323(g). The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, from the funds for carrying out the purposes of this chapter. Sums reimbursable to a State pursuant to section 323(g) shall be credited to the account of such State in the Unemployment Trust Fund and shall be used only for the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

[(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Treasury and credited to current applicable appropriations, funds, or accounts from which payments to States under this section may be made.

[(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement, or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary of Labor may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

**§SEC. 333. LIABILITIES OF CERTIFYING AND DISBURSING OFFICERS.**

[(a) No person designated by the Secretary of Labor, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any allowance certified by him under this chapter.

[(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

#### **[SEC. 334. RECOVERY OF OVERPAYMENTS.**

[(a) If a State agency or the Secretary of Labor, or a court of competent jurisdiction finds that any person—

[(1) has made, or has caused to be made by another, a false statement or representation of a material fact knowing it to be false, or has knowingly failed or caused another to fail to disclose a material fact; and

[(2) as a result of such action has received any payment of allowances under this chapter to which he was not entitled, such person shall be liable to repay such amount to the State agency or the Secretary of Labor, as the case may be, or either may recover such amount by deductions from any allowance payable to such person under this chapter. Any such finding by a State agency or the Secretary of Labor may be made only after an opportunity for a fair hearing.

[(b) Any amount repaid to a State agency under this section shall be deposited into the fund from which payment was made. Any amount repaid to the Secretary of Labor under this section shall be returned to the Treasury and credited to the current applicable appropriation, fund, or account from which payment was made.

#### **[SEC. 335. PENALTIES.**

[Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payment or assistance authorized to be furnished under this chapter or pursuant to an agreement under section 331 shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

#### **[SEC. 336. REVIEW.**

[Except as may be provided in regulations prescribed by the Secretary of Labor to carry out his functions under this chapter, determinations under this chapter as to the entitlement of individuals for adjustment assistance shall be final and conclusive for all purposes and not subject to review by any court or any other officer. To the maximum extent practicable and consistent with the purposes of this chapter, such regulations shall provide that such determinations by a State agency will be subject to review in the same manner and to the same extent as determinations under the State law.

#### **[SEC. 337. AUTHORIZATION OF APPROPRIATIONS.**

[There are hereby authorized to be appropriated to the Secretary of Labor such sums as may be necessary from time to time to carry out his functions under this chapter in connection with furnishing adjustment assistance to workers, which sums are authorized to be appropriated to remain available until expended.

#### **[SEC. 338. DEFINITIONS.**

[For purposes of this chapter—

[(1) The term "adversely affected employment" means employment in a firm or appropriate subdivision of a firm, if workers of such firm or subdivision are eligible to apply for adjustment assistance under this chapter.

[(2) The term "adversely affected worker" means an individual who, because of lack of work in an adversely affected employment—

[(A) has been totally or partially separated from such employment, or

[(B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists.

[(3) The term "average weekly manufacturing wage" means the national gross average weekly earnings of production workers in manufacturing industries for the latest calendar year (as officially published annually by the Bureau of Labor Statistics of the Department of Labor) most recently published before the period for which the assistance under this chapter is furnished.

[(4) The term "average weekly wage" means one-thirteenth of the total wages paid to an individual in the high quarter. For purposes of this computation, the high quarter shall be that quarter in which the individual's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately before the quarter in which occurs the week with respect to which the computation is made. Such week shall be the week in which total separation occurred, or, in cases where partial separation is claimed, an appropriate week, as defined in regulations prescribed by the Secretary of Labor.

[(5) The term "average weekly hours" means the average hours worked by the individual (excluding overtime) in the employment from which he has been or claims to have been separated in the 52 weeks (excluding weeks during which the individual was sick or on vacation) preceding the week specified in the last sentence of paragraph (4).

[(6) The term "partial separation" means, with respect to an individual who has not been totally separated, that he has had his hours of work reduced to 80 percent or less of his average weekly hours in adversely affected employment and his wages reduced to 75 percent or less of his average weekly wage in such adversely affected employment.

[(7) The term "remuneration" means wages and net earnings derived from services performed as a self-employed individual.

[(8) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico; and the term "United States" when used in the geographical sense includes such Commonwealth.

[(9) The term "State agency" means the agency of the State which administers the State law.

[(10) The term "State law" means the unemployment insurance law of the State approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

[(11) The term "total separation" means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.

[(12) The term "unemployment insurance" means the unemployment insurance payable to an individual under any State law or Federal unemployment insurance law, including title XV of the Social Security Act, the Railroad Unemployment Insurance Act, and the Temporary Extended Unemployment Compensation Act of 1961.

[(13) The term "week" means a week as defined in the applicable State law.]

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## CHAPTER 4—TARIFF ADJUSTMENT

**SEC. 351. AUTHORITY.**

(a)(1) After receiving an affirmative finding of the Tariff Commission under section 301(b) with respect to an industry, the President may proclaim such increase in, or imposition of, any duty or other import restriction on the article causing or threatening to cause serious injury to such industry as he determines to be necessary to prevent or remedy serious injury to such industry.

(2) If the President does not, within 60 days after the date on which he receives such affirmative finding, proclaim the increase in, or imposition of, any duty or other import restriction on such article found and reported by the Tariff Commission pursuant to section 301(e)—

(A) he shall immediately submit a report to the House of Representatives and to the Senate stating why he has not proclaimed such increase or imposition, and

(B) such increase or imposition shall take effect (as provided in paragraph (3)) upon the adoption by both Houses of the Congress (within the 60-day period following the date on which the report referred to in subparagraph (A) is submitted to the House of Representatives and the Senate), by the yeas and nays by the affirmative vote of a majority of the authorized membership of each House, of a concurrent resolution stating in effect that the Senate and House of Representatives approve the increase in, or imposition of, any duty or other import restriction on the article found and reported by the Tariff Commission.

For purposes of subparagraph (B), in the computation of the 60-day period there shall be excluded the days on which either House is not in session because of adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die. The report referred to in subparagraph (A) shall be delivered to both Houses of the Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House of Representatives is not in session and to the Secretary of the Senate if the Senate is not in session.

(3) In any case in which the contingency set forth in paragraph (2)(B) occurs, the President shall (within 15 days after the adoption of such resolution) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was found and reported by the Tariff Commission pursuant to section 301(e).

(4) The President may, within 60 days after the date on which he receives an affirmative finding of the Tariff Commission under section 301(b) with respect to an industry, request additional information from the Tariff Commission. The Tariff Commission shall, as soon as practicable but in no event more than 120 days after the date on which it receives the President's request, furnish additional information with respect to such industry in a supplemental report. For purposes of paragraph (2), the date on which the President receives such supplemental report shall be treated as the date on which the President received the affirmative finding of the Tariff Commission with respect to such industry.

- (b) No proclamation pursuant to subsection (a) shall be made—  
 (1) increasing any rate of duty to a rate more than 50 percent above the rate existing on July 1, 1934, or, if the article is dutiable but no rate existed on July 1, 1934, the rate existing at the time of the proclamation,

(2) in the case of an article not subject to duty, imposing a duty in excess of 50 percent ad valorem.

For purposes of paragraph (1), the term "existing on July 1, 1934" has the meaning assigned to such term by paragraph (5) of section 256.

- (c)(1) Any increase in, or imposition of, any duty or other import restriction proclaimed pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951—

(A) may be reduced or terminated by the President when he determines, after taking into account the advice received from the Tariff Commission under subsection (d)(2) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such reduction or termination is in the national interest, and

(B) **[unless extended under paragraph (2),]** *unless extended under section 203 of the Trade Reform Act of 1974* shall terminate not later than the close of the date which is 4 years (or, in the case of any such increase or imposition proclaimed pursuant to such section 7, 5 years) after the effective date of the initial proclamation or the date of the enactment of this Act, whichever date is the later.

**[(2)** Any increase in, or imposition of, any duty or other import restriction proclaimed pursuant to this section or pursuant to section 7 of the Trade Agreements Extension Act of 1951 may be extended in whole or in part by the President for such periods (not in excess of 4 years at any one time) as he may designate if he determines, after taking into account the advice received from the Tariff Commission under subsection (d)(3) and after seeking advice of the Secretary of Commerce and the Secretary of Labor, that such extension is in the national interest.]

(d)(1) So long as any increase in, or imposition of, any duty or other import restriction pursuant to this section or pursuant to section 7 of the Trade Agreements Extension Act of 1951 remains in effect, the Tariff Commission shall keep under review developments with respect to the industry concerned, and shall make annual reports to the President concerning such developments.

(2) Upon request of the President or upon its own motion, the Tariff Commission shall advise the President of its judgment as to the probable economic effect on the industry concerned of the reduction or termination of the increase in, or imposition of, any duty or other import restriction pursuant to this section or section 7 of the Trade Agreements Extension Act of 1951.

**[(3)** Upon petition on behalf of the industry concerned, filed with the Tariff Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any increase or imposition referred to in paragraph (1) or (2) of subsection (c) is to terminate by reason of the expiration of the applicable period prescribed in paragraph (1) or an extension thereof under

paragraph (2), the Tariff Commission shall advise the President of its judgment as to the probable economic effect on such industry of such termination.】

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## CHAPTER 5—ADVISORY BOARD

### 【SEC. 361. ADJUSTMENT ASSISTANCE ADVISORY BOARD.

【(a) There is hereby created the Adjustment Assistance Advisory Board, which shall consist of the Secretary of Commerce, as Chairman, and the Secretaries of the Treasury, Agriculture, Labor, Interior, and Health, Education, and Welfare, the Administrator of the Small Business Administration, and such other officers as the President deems appropriate. Each member of the Board may designate an officer of his agency to act for him as a member of the Board. The Chairman may from time to time invite the participation of officers of other agencies of the executive branch.

【(b) At the request of the President, the Board shall advise him and the agencies furnishing adjustment assistance pursuant to chapters 2 and 3 on the development of coordinated programs for such assistance, giving full consideration to ways of preserving and restoring the employment relationship of firms and workers where possible, consistent with sound economic adjustment.

【(c) The Chairman may appoint for any industry an industry committee composed of members representing employers, workers, and the public, for the purpose of advising the Board. Members of any such committee shall, while attending meetings, be entitled to receive compensation and reimbursement as provided in section 401(3). The provisions of section 1003 of the National Defense Education Act of 1958 (20 U.S.C. 583) shall apply to members of such committee.】

## TITLE IV—GENERAL PROVISIONS

### 【SEC. 401. AUTHORITIES.

【The head of any agency performing functions under this Act may—

【(1) authorize the head of any other agency to perform any of such functions;

【(2) prescribe such rules and regulations as may be necessary to perform such functions; and

【(3) to the extent necessary to perform such functions, procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil service and classification laws, and, except in the case of stenographic reporting services by organizations, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5). Any individual so employed may be compensated at a rate not in excess of \$75 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed \$16 per diem in lieu of subsistence and other expenses.

**[SEC. 402. REPORTS.**

[(a) The President shall submit to the Congress an annual report on the trade agreements program and on tariff adjustment and other adjustment assistance under this Act. Such report shall include information regarding new negotiations, changes made in duties and other import restrictions of the United States, reciprocal concessions obtained, changes in trade agreements in order to effectuate more fully the purposes of the trade agreements program (including the incorporation therein of escape clauses), the results of action taken to obtain removal of foreign trade restrictions (including discriminatory restrictions) against United States exports, remaining restrictions, and the measures available to seek their removal in accordance with the purposes of this Act, and other information relating to the trade agreements program and to the agreements entered into thereunder.

[(b) The Tariff Commission shall submit to the Congress, at least once a year, a factual report on the operation of the trade agreements program.

**[SEC. 403. TARIFF COMMISSION.**

[(a) In order to expedite the performance of its functions under this Act, the Tariff Commission may conduct preliminary investigations, determine the scope and manner of its proceedings, and consolidate proceedings before it.

[(b) In performing its functions under this Act, the Tariff Commission may exercise any authority granted to it under any other Act.

[(c) The Tariff Commission shall at all times keep informed concerning the operation and effect of provisions relating to duties or other import restrictions of the United States contained in trade agreements entered into under the trade agreements program.

**[SEC. 404. SEPARABILITY.**

[If any provision of this Act or the application of any provision to any circumstances or persons shall be held invalid, the validity of the remainder of this Act, and of the application of such provision to other circumstances or persons, shall not be affected thereby.]

**SEC. 405. DEFINITIONS.**

For purposes of this Act—

[(1) The term “agency” includes any agency, department, board, wholly or partly owned corporation, instrumentality, commission, or establishment of the United States.]

(2) The term “duty or other import restriction” includes (A) the rate and form of an import duty, and (B) a limitation, prohibition, charge, and exaction other than duty, imposed on importation or imposed for the regulation of imports.

[(3) The term “firm” includes an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustees in bankruptcy, and receivers under decree of any court. A firm, together with any predecessor, successor, or affiliated firm controlled or substantially beneficially owned by substantially the same persons, may be considered a single firm where necessary to prevent unjustifiable benefits.

[(4) An imported article is “directly competitive with” a domestic article at an earlier or later stage of processing, and a domestic article

is "directly competitive with" an imported article at an earlier or later stage of processing, if the importation of the imported article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article. For purposes of this paragraph, the unprocessed article is at an earlier stage of processing.

[(5) A product of a country or area is an article which is the growth, produce, or manufacture of such country or area.]

(6) The term "modification," as applied to any duty or other import restriction, includes the elimination of any duty.

## INTERNAL REVENUE ACT OF 1954

### SEC. 3302. CREDITS AGAINST TAX.

(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS.—(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 3304.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(b) ADDITIONAL CREDIT.—In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject

under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a rate of 2.7 percent, whichever rate is lower.

(c) **LIMIT ON TOTAL CREDITS.**—(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act before the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) in the case of a taxable year beginning on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968), as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(B) in the case of any succeeding taxable year beginning on or after January 1, 1968, as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State.

At the request (made before November 1 of the taxable year) of the Governor of any State, the Secretary of Labor shall, as soon as practicable after June 30 or (if later) the date of the receipt of such request, certify to such Governor and to the Secretary of the Treasury the amount he estimates equals .15 percent (plus an additional .15 percent for each additional 5-percent reduction, provided by subparagraph (B)) of the total of the remuneration which would have been subject to contributions under the State unemployment compensation law with respect to the calendar year preceding such certification if the dollar limit on remuneration subject to contributions under such law were equal to the dollar limit under section 3306 (b)(1) for such calendar year. If, after receiving such certification and before November 10 of the taxable year, the State pays into the Federal unemployment account the amount so certified (and designates such payment as being made for purposes of this sentence), the reduction provided by the first sentence of this paragraph shall not apply for such taxable year.

(3) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act on or after the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 percent of the tax imposed by

section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

(4) *If the Secretary of Labor determines a State or State agency, has not—*

(A) *entered into the agreement described in section 239 of the Trade Reform Act of 1974, with the Secretary of Labor before July 1, 1975, or*

(B) *fulfilled its comments under an agreement with the Secretary of Labor as described in section 239 of the Trade Reform Act of 1974, then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1), (2), and (3) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or maintain such an agreement shall be reduced by 15 percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.*

(d) **DEFINITIONS AND SPECIAL RULES RELATING TO SUBSECTION (c).**

(1) **Rate of tax deemed to be 3 percent.**—In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of the rate provided by such section.

(2) **Wages attributable to a particular State.**—For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

(3) Additional taxes inapplicable where advances are repaid before November 10 of taxable year.—Paragraph (2) or (3) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) Average employer contribution rate.—For purposes of subparagraphs (B) and (C) of subsection (c)(3), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(3), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employer payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-year benefit cost rate.—For purposes of subparagraph (C) of subsection (c)(3), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) Rounding.—If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(3) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) Determination and certification of percentages.—The percentage referred to in subsection (c)(3) (B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(8) Cross reference.—

For reduction of total credits allowable under subsection (c), see section 104 of the Temporary Unemployment Compensation Act of 1958.

(e) SUCCESSOR EMPLOYER.—Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another



person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place, then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

## TITLE 28—UNITED STATES CODE

### SEC. 2631. TIME FOR COMMENCEMENT OF ACTION.

(a) An action over which the court has jurisdiction under section 1582(a) of this title is barred unless commenced within one hundred and eighty days after:

(1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; or

(2) the date of denial of a protest by operation of law pursuant to the provisions of section 515(b) of the Tariff Act of 1930, as amended.

(b) An action over which the court has jurisdiction under section 1582(b) of this title is barred unless commenced within thirty days after the date of mailing of a notice sent pursuant to section 516(c) of the Tariff Act of 1930, as amended **[.]** or, *in the case of an action under 516(d) of such Act, after the date of publication of a notice under such section.*

### SEC. 2632. CUSTOMS COURT PROCEDURE AND FEES.

(a) **[A party may contest denial of a protest under section 515 of the Tariff Act of 1930, as amended, or the decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended, by bringing a civil action in the Customs Court.]**

*A party may contest (1) denial of a protest under section 515 of the Tariff Act of 1930, as amended; (2) a decision of the Secretary of the Treasury made under section 516 of the Tariff Act of 1930, as amended; or (3) a determination by the Secretary of the Treasury under section 201 of the Antidumping Act, 1921, as amended, that a class or kind of merchandise is not being, nor likely to be, sold in the United States at less than its fair value; by bringing civil action in the Customs Court. A civil action shall be commenced by filing a summons in the form, manner, and style and with the content prescribed in rules adopted by the court.*

(b) There shall be a filing fee payable upon commencing an action. The amount of the fee shall be fixed by the Customs Court but shall

be not less than \$5 nor more than the filing fee for commencing a civil action in a United States district court. The Customs Court may fix all other fees to be charged by the clerk of the court.

(c) The Customs Court shall provide by rule for pleadings and other papers, for their amendment, service, and filing, for consolidations, severances, and suspensions of cases, and for other procedural matters.

(d) The Customs Court, by rule, may consider any new ground in support of a civil action if the new ground (1) applies to the same merchandise that was the subject of the protest; and (2) is related to the same administrative decision or decisions listed in section 514 of the Tariff Act of 1930, as amended, that were contested in the protest.

(e) All pleadings and other papers filed in the Customs Court shall be served on all the adverse parties in accordance with the rules of the court. When the United States is an adverse party, service of the summons shall be made on the Attorney General and the Secretary of the Treasury or their designees.

(f) Upon service of the summons on the Secretary of the Treasury or his designee *in any action brought under subsection (a)(1) or (a)(2)* the appropriate customs officer shall forthwith transmit the following items, if they exist, to the United States Customs Court as part of the official record of the civil action: (1) consumption or other entry; (2) commercial invoice; (3) special Customs invoice; (4) copy of protest; (5) copy of denial of protest in whole or in part; (6) importer's exhibits; (7) official samples; (8) any official laboratory reports; and (9) the summary sheet. If any of the aforesaid items do not exist in the particular case, an affirmative statement to that effect shall be transmitted as part of the official record.

(g) *Upon service of the summons on the Secretary of the Treasury or his designee in an action contesting the Secretary's determination under section 201 of the Antidumping Act, 1921, as amended, that a class or kind of foreign merchandise is not being, nor is likely to be, sold in the United States at less than its fair value, the Secretary or his designee shall forthwith transmit to the United States Customs Court, as the official record of the civil action, a certified copy of the transcript of any hearing held by the Secretary in the particular antidumping proceeding pursuant to section 201(d)(1) of the Antidumping Act, 1921, as amended, and certified copies of all notices, determinations, or other matters which the Secretary has caused to be published in the Federal Register in connection with the particular antidumping proceeding.*

## STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

### Subchapter I—Allocation and Payment of Funds

#### SEC. 102. PAYMENTS TO STATE AND LOCAL GOVERNMENTS.

Except as otherwise provided in this chapter, the Secretary shall, for each entitlement period, pay out of the Trust Fund to—

(1) each State government a total amount equal to the entitlement of such State government determined under section 1226 of this title for such period, and

(2) each unit of local government a total amount equal to the entitlement of such unit determined under section 1227 of this title for such period.

In the case of entitlement periods ending after October 20, 1972, such payments shall be made in installments, but not less often than once for each quarter, and, in the case of quarters ending after September 30, 1972, shall be paid not later than 5 days after the close of each quarter. Such payments for any entitlement period may be initially made on the basis of estimates. Proper adjustment shall be made in the amount of any payment to a State government or a unit of local government to the extent that the payments previously made to such government under this subchapter were in excess of or less than the amounts required to be paid.

#### **SEC. 103. USE OF FUNDS BY LOCAL GOVERNMENTS FOR PRIORITY EXPENDITURES.**

(a) **IN GENERAL.**—Funds received by units of local government under this subchapter may be used only for priority expenditures. For purposes of this chapter, the term "priority expenditures" means only—

(1) ordinary and necessary maintenance and operating expenses for—

(A) public safety (including law enforcement, fire protection, and building code enforcement),

(B) environmental protection (including sewage disposal, sanitation, and pollution abatement),

(C) public transportation (including transit systems and streets and roads),

(D) health,

(E) recreation,

(F) libraries,

(G) social services for the poor or aged, and

(H) financial administration; and

(2) ordinary and necessary capital expenditures authorized by law.

(b) **CERTIFICATES BY LOCAL GOVERNMENTS.**—The Secretary is authorized to accept a certification by the chief executive officer of a unit of local government that the unit of local government has used the funds received by it under this subchapter for an entitlement period only for priority expenditures, unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this chapter.

#### **SEC. 104. PROHIBITION ON USE AS MATCHING FUNDS BY STATE OR LOCAL GOVERNMENTS.**

(a) **IN GENERAL.**—No State government or unit of local government may use, directly or indirectly, any part of the funds it receives under this subchapter as a contribution for the purpose of obtaining Federal funds under any law of the United States which requires such government to make a contribution in order to receive Federal funds.

(b) **DETERMINATIONS BY SECRETARY OF THE TREASURY.**—If the Secretary has reason to believe that a State government or unit of local government has used funds received under this subchapter in violation of subsection (a) of this section, he shall give reasonable notice and opportunity for hearing to such government. If, thereafter, the Secretary of the Treasury determines that such government has used funds in violation of subsection (a) of this section, he shall notify such govern-

ment of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent payments to such government under this subchapter an amount equal to the funds so used.

(c) **INCREASED STATE OR LOCAL GOVERNMENT REVENUES.**—No State government or unit of local government shall be determined to have used funds in violation of subsection (a) of this section with respect to any funds received for any entitlement period to the extent that the net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the one-year period beginning July 1, 1971 (or one-half of such net revenues, in the case of an entitlement period of 6 months).

(d) **DEPOSITS AND TRANSFERS TO GENERAL FUND.**—Any amount repaid by a State government or unit of local government under subsection (b) of this section shall be deposited in the general fund of the Treasury. An amount equal to the reduction in payments to any State government or unit or local government which results from the application of this section (after any judicial review under section 1263 of this title) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

(e) **CERTIFICATES BY STATE AND LOCAL GOVERNMENTS.**—The Secretary is authorized to accept a certification by the Governor of a State or the chief executive officer of a unit of local government that the State government or unit of local government has not used any funds received by it under this subchapter for an entitlement period in violation of subsection (a) of this section, unless he determines that such certification is not sufficiently reliable to enable him to carry out his duties under this chapter.

## **SEC. 105. CREATION OF TRUST FUND; APPROPRIATIONS.**

### **(a) TRUST FUND.—**

(1) **IN GENERAL.**—There is hereby established on the books of the Treasury of the United States a trust fund to be known as the "State and Local Government Fiscal Assistance Trust Fund" (referred to in this subchapter as the "Trust Fund"). The Trust Fund shall remain available without fiscal year limitation and shall consist of such amounts as may be appropriated to it and deposited in it as provided in subsection (b) of this section. Except as provided in this chapter, amounts in the Trust Fund may be used only for the payments to State and local governments provided by this subchapter.

(2) **TRUSTEE.**—The Secretary of the Treasury shall be the trustee of the Trust Fund and shall report to the Congress not later than March 1 of each year on the operation and status of the Trust Fund during the preceding fiscal year.

### **(b) APPROPRIATIONS.—**

(1) **IN GENERAL.**—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, \$2,650,000,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, \$2,650,000,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, \$2,987,500,000;

(D) for the fiscal year beginning July 1, 1973, \$6,050,000,000;

(E) for the fiscal year beginning July 1, 1974, \$6,200,000,000;

(F) for the fiscal year beginning July 1, 1975, \$6,350,000,000; and

(G) for the period beginning July 1, 1976, and ending December 31, 1976, \$3,325,000,000.

(2) **NONCONTIGUOUS STATES ADJUSTMENT AMOUNTS.**—There is appropriated to the Trust Fund, out of amounts in the general fund of the Treasury attributable to the collections of the Federal individual income taxes not otherwise appropriated—

(A) for the period beginning January 1, 1972, and ending June 30, 1972, \$2,390,000;

(B) for the period beginning July 1, 1972, and ending December 31, 1972, \$2,390,000;

(C) for the period beginning January 1, 1973, and ending June 30, 1973, \$2,390,000;

(D) for each of the fiscal years beginning July 1, 1973, July 1, 1974, and July 1, 1975, \$4,780,000; and

(E) for the period beginning July 1, 1976, and ending December 31, 1976, \$2,390,000.

(3) **DEPOSITS.**—Amounts appropriated by paragraph (1) or (2) for any fiscal year or other period shall be deposited in the Trust Fund on the later of (A) the first day of such year or period, or (B) the day after October 21, 1972.

(c) **TRANSFERS FROM TRUST FUND TO GENERAL FUND.**—The Secretary shall from time to time transfer from the Trust Fund to the general fund of the Treasury any moneys in the Trust Fund which he determines will not be needed to make payments to State governments and units of local government under this subchapter.

## **SEC. 106. ALLOCATION AMONG STATES.**

(a) **IN GENERAL.**—There shall be allocated to each State for each entitlement period, out of amounts appropriated under section 1224 (b)(1) of this title for that entitlement period, an amount which bears the same ratio to the amount appropriated under that section for that period as the amount allocable to that State under subsection (b) of this section bears to the sum of the amounts allocable to all States under subsection (b) of this section.

(b) **DETERMINATION OF ALLOCABLE AMOUNT.**—

(1) **IN GENERAL.**—For purposes of subsection (a) of this section, the amount allocable to a State under this subsection for any entitlement period shall be determined under paragraph (2), except that such amount shall be determined under paragraph (3) if the amount allocable to it under paragraph (3) is greater than the sum of the amounts allocable to it under paragraph (2) and subsection (c) of this section.

(2) **THREE FACTOR FORMULA.**—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount which bears the same ratio to \$5,300,000,000 as—

(A) the population of that State, multiplied by the general tax effort factor of that State, multiplied by the relative income factor of that State, bears to

(B) the sum of the products determined under subparagraph (A) for all States.

(3) **FIVE FACTOR FORMULA.**—For purposes of paragraph (1), the amount allocable to a State under this paragraph for any entitlement period is the amount to which that State would be entitled if—

(A)  $\frac{1}{3}$  of \$3,500,000,000 were allocated among the States on the basis of population,

(B)  $\frac{1}{3}$  of \$3,500,000,000 were allocated among the States on the basis of urbanized population,

(C)  $\frac{1}{3}$  of \$3,500,000,000 were allocated among the States on the basis of population inversely weighted for per capita income,

(D)  $\frac{1}{2}$  of \$1,800,000,000 were allocated among the States on the basis of income tax collections, and

(E)  $\frac{1}{2}$  of \$1,800,000,000 were allocated among the States on the basis of general tax effort.

(c) **NONCONTIGUOUS STATES ADJUSTMENT.**—

(1) **IN GENERAL.**—In addition to amounts allocated among the States under subsection (a) of this section, there shall be allocated for each entitlement period, out of amounts appropriated under section 1224(b)(2) of this title, an additional amount to any State (A) whose allocation under subsection (b) of this section is determined by the formula set forth in paragraph (2) of that subsection and (B) in which civilian employees of the United States Government receive an allowance under section 5941 of Title 5.

(2) **DETERMINATION OF AMOUNT.**—The additional amount allocable to any State under this subsection for any entitlement period is an amount equal to a percentage of the amount allocable to that State under subsection (b)(2) of this section for that period which is the same as the percentage of basic pay received by such employees stationed in that State as an allowance under such section 5941. If the total amount appropriated under section 1224(b)(2) of this title for any entitlement period is not sufficient to pay in full the additional amounts allocable under this subsection for that period, the Secretary shall reduce proportionately the amounts so allocable.

## **SEC. 107. ENTITLEMENTS OF STATE GOVERNMENTS.**

(a) **DIVISION BETWEEN STATE AND LOCAL GOVERNMENTS.**—The State government shall be entitled to receive one-third of the amount allocated to that State for each entitlement period. The remaining portion of each State's allocation shall be allocated among the units of local government of that State as provided in section 1227 of this title.

(b) **STATE MUST MAINTAIN TRANSFERS TO LOCAL GOVERNMENTS.**—

(1) **GENERAL RULE.**—The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, shall be reduced by the amount (if any) by which—

(A) the average of the aggregate amounts transferred by the State government (out of its own sources) during such period and the preceding entitlement period to all units of local government in such State, is less than,

(B) the similar aggregate amount for the one-year period beginning July 1, 1971.

For purposes of subparagraph (A), the amount of any reduction in the entitlement of a State government under this subsection for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.

(2) ADJUSTMENT WHERE STATE ASSUMES RESPONSIBILITY FOR CATEGORY OF EXPENDITURES.—If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the one-year period beginning July 1, 1971, it transferred to units of local government.

(3) ADJUSTMENT WHERE NEW TAXING POWERS ARE CONFERRED UPON LOCAL GOVERNMENTS.—If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local government within such State have had conferred upon them new taxing authority, then, under regulations prescribed by the Secretary, the aggregate amount taken into account under paragraph (1)(B) shall be reduced to the extent of the larger of—

(A) an amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(B) an amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under subparagraph (A) if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(4) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1973.—In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (1)(A) shall be treated as being the one-year period beginning July 1, 1972.

(5) SPECIAL RULE FOR PERIOD BEGINNING JULY 1, 1976.—In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (1)(A) for the preceding entitlement period and the aggregate amount taken into account under paragraph (1)(B) shall be one-half of the amounts which (but for this paragraph) would be taken into account.

(6) REDUCTION IN ENTITLEMENT.—If the Secretary has reason to believe that paragraph (1) requires a reduction in the en-

titlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (1) requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subchapter an amount equal to such reduction.

(7) **TRANSFER TO GENERAL FUND.**—An amount equal to the reduction in the entitlement of any State government which results from the application of this subsection (after any judicial review under section 1263 of this title) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

**(c) REDUCTION IN ENTITLEMENT TO COVER LIABILITY ON CERTAIN LOAN GUARANTEES.**—

(1) **GENERAL RULE.**—*The entitlement of a State government for an entitlement period beginning after June 30, 1976, shall be reduced by an amount which is equal to one-half the amount, if any, of the liability which arose during the preceding entitlement period on each community readjustment assistance loan guarantee for which the Governor of such State signed a commitment to the Secretary of Commerce under section 273 of the Trade Reform Act of 1974. If the Governor signed such a commitment jointly with the authorized representative of a local government, then such State government entitlement shall be reduced by the proportion of one-half the amount of such liability which is specified in such joint commitment. For purposes of subsection (b)(1)(A), the amount of any reduction in the entitlement of a State government under this subsection for an entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government (out of its own sources) during such period to units of local government in such State.*

(2) **REDUCTION IN ENTITLEMENT.**—*As soon as is practical, the Secretary of Commerce shall notify the Secretary as to the amount of liability which arises on any loan guarantee for which the Governor of a State signed a commitment under section 273 of the Trade Reform Act of 1974. The Secretary shall—*

*(A) determine the amount of reduction which paragraph (1) requires in the entitlement of such State government for the appropriate entitlement period,*

*(B) shall notify the Governor of such State of such determination, and*

*(C) shall withhold from subsequent payments to such State government under this subchapter an amount equal to such reduction.*

(3) **TRANSFER TO GENERAL FUND.**—*An amount equal to the reduction in entitlement of any State government which results from the application of this subsection (after any judicial review under section 143 of this title) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.*



# SEC. 108. ENTITLEMENTS OF LOCAL GOVERNMENTS.

(a) **ALLOCATION AMONG COUNTY AREAS.**—The amount to be allocated to the units of local government within a State for any entitlement period shall be allocated among the county areas located in that State so that each county area will receive an amount which bears the same ratio to the total amount to be allocated to the unit of local government within that State as—

(1) the population of that county area, multiplied by the general tax effort factor of that county area, multiplied by the relative income factor of that county area, bears to

(2) the sum of the products determined under paragraph (1) for all county areas within that State.

(b) **ALLOCATION TO COUNTY GOVERNMENTS, MUNICIPALITIES, TOWNSHIPS, ETC.**—

(1) **COUNTY GOVERNMENTS.**—The county government shall be allocated that portion of the amount allocated to the county area for the entitlement period under subsection (a) of this section which bears the same ratio to such amount as the adjusted taxes of the county government bear to the adjusted taxes of the county government and all other units of local government located in the county area.

(2) **OTHER UNITS OF LOCAL GOVERNMENT.**—The amount remaining for allocation within a county area after the application of paragraph (1) shall be allocated among the units of local government (other than the county government and other than township governments) located in that county area so that each unit of local government will receive an amount which bears the same ratio to the total amount to be allocated to all such units as—

(A) the population of that local government, multiplied by the general tax effort factor of that local government, multiplied by the relative income factor of that local government, bears to

(B) the sum of the products determined under subparagraph (A) for all such units.

(3) **TOWNSHIP GOVERNMENTS.**—If the county area includes one or more township governments, then before applying paragraph (2)—

(A) there shall be set aside for allocation under subparagraph (B) to such township governments that portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the sum of the adjusted taxes of all such township governments bears to the aggregate adjusted taxes of the county government, such township governments, and all other units of local government located in the county area, and

(B) that portion of each amount set aside under subparagraph (A) shall be allocated to each township government on the same basis as amounts are allocated to units of local government under paragraph (2).

If this paragraph applies with respect to any county area for any entitlement period, the remaining portion allocated under paragraph (2) to the units of local government located in the

county area (other than the county government and the township governments) shall be appropriately reduced to reflect the amounts set aside under subparagraph (A).

(4) **INDIAN TRIBES AND ALASKAN NATIVE VILLAGES.**—If within a county area there is an Indian tribe or Alaskan native village which has a recognized governing body which performs substantial governmental functions, then before applying paragraph (1) there shall be allocated to such tribe or village a portion of the amount allocated to the county area for the entitlement period which bears the same ratio to such amount as the population of that tribe or village within that county area bears to the population of that county area. If this paragraph applies with respect to any county area for any entitlement period, the amount to be allocated under paragraph (1) shall be appropriately reduced to reflect the amount allocated under the preceding sentence. If the entitlement period of any such tribe or village is waived for any entitlement period by the governing body of that tribe or village, then the provisions of this paragraph shall not apply with respect to the amount of such entitlement for such period.

(5) **RULE FOR SMALL UNITS OF GOVERNMENT.**—If the Secretary determines that in any county area the data available for any entitlement period are not adequate for the application of the formulas set forth in paragraphs (2) and (3)(B) with respect to units of local government (other than a county government) with a population below a number (not more than 500) prescribed for that county area by the Secretary, he may apply paragraph (2) or (3)(B) by allocating for such entitlement period to each such unit located in that county area an amount which bears the same ratio to the total amount to be allocated under paragraph (2) or (3)(B) for such entitlement period as the population of such unit bears to the population of all units of local government in that county area to which allocations are made under such paragraph. If the preceding sentence applies with respect to any county area, the total amount to be allocated under paragraph (2) or (3)(B) to other units of local government in that county area for the entitlement period shall be appropriately reduced to reflect the amounts allocated under the preceding sentence.

(6) **ENTITLEMENT.**—

(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, the entitlement of any unit of local government for any entitlement period shall be the amount allocated to such unit under this subsection (after taking into account any applicable modification under subsection (c) of this section).

(B) **MAXIMUM AND MINIMUM PER CAPITA ENTITLEMENT.**—Subject to the provisions of subparagraphs (C) and (D), the per capita amount allocated to any county area or any unit of local government (other than a county government) within a State under this section for any entitlement period shall not be less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 1225 of this title, divided by the population of that State.

(C) **LIMITATION.**—The amount allocated to any unit of local government under this section for any entitlement period shall not exceed 50 percent of the sum of (i) such government's adjusted taxes, and (ii) the intergovernmental transfers of revenue to such government (other than transfers to such government under this subchapter).

(D) **ENTITLEMENT LESS THAN \$200, OR GOVERNING BODY WAIVES ENTITLEMENT.**—If (but for this subparagraph) the entitlement of any unit of local government below the level of the county government—

(i) would be less than \$200 for any entitlement period (\$100 for an entitlement period of 6 months), or

(ii) is waived for any entitlement period by the governing body of such unit,

then the amount of such entitlement for such period shall (in lieu of being paid to such unit) be added to, and shall become a part of, the entitlement for such period of the county government of the county area in which such unit is located.

(7) **ADJUSTMENT OF ENTITLEMENT.**—

(A) **IN GENERAL.**—In adjusting the allocation of any county area or unit of local government, the Secretary shall make any adjustment required under paragraph (6)(B) first, any adjustment required under paragraph (6)(C) next, and any adjustment required under paragraph (6)(D) last.

(B) **ADJUSTMENT FOR APPLICATION OF MAXIMUM OR MINIMUM PER CAPITA ENTITLEMENT.**—The Secretary shall adjust the allocations made under this section to county areas or to units of local governments in any State in order to bring those allocations into compliance with the provisions of paragraph (6)(B). In making such adjustments he shall make any necessary adjustments with respect to county areas before making any necessary adjustments with respect to units of local government.

(C) **ADJUSTMENT FOR APPLICATION OF LIMITATION.**—In any case in which the amount allocated to a unit of local government is reduced under paragraph (6)(C) by the Secretary, the amount of that reduction—

(i) in the case of a unit of local government (other than a county government), shall be added to and increase the allocation of the county government of the county area in which it is located, unless (on account of the application of paragraph (6)) that county government may not receive it, in which case the amount of the reduction shall be added to and increase the entitlement of the State government of the State in which that unit of local government is located; and

(ii) in the case of a county government, shall be added to and increase the entitlement of the State government of the State in which it is located.

(d) **REDUCTION IN ENTITLEMENT TO COVER LIABILITY ON CERTAIN LOAN GUARANTEES.**—

(i) *The entitlement of a local government under subsection (b) for an entitlement period beginning after*

June 30, 1976, shall be reduced by an amount which is equal to one-half the amount, if any, of the liability which arose during the preceding entitlement period on each community readjustment assistance loan guarantee for which the authorized representative of such local government signed a commitment to the Secretary of Commerce under section 273 of the Trade Reform Act of 1974. If the authorized representative signed such a commitment jointly with the Governor of the State, such local government entitlement shall be reduced by the proportion of one-half the amount of such liability which is specified in such joint commitment.

(ii) As soon as is practical, the Secretary of Commerce shall notify the Secretary as to the amount of liability which arises on any loan guarantee for which the authorized representative of a local government sign a commitment under section 273 of the Trade Reform Act of 1974. The Secretary shall determine the amount of reduction which clause (i) requires in the entitlement of such local government for the appropriate entitlement period, notify such local government of such determination, and withhold from subsequent payments to such local government under this subchapter an amount equal to such reduction.

(iii) An amount equal to the reduction in entitlement of any local government which results from the application of this subparagraph (after any judicial review under section 143 of this title) shall be transferred from the Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

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#### SEC. 143. JUDICIAL REVIEW.

(a) PETITIONS FOR REVIEW.—[Any State] Any State or unit of local government which receives a notice of reduction in entitlement under section 107 (b) or (c) or section 108(b) of this title, and any State or unit of local government which receives a notice of withholding of payments under section 104(b) or 123(b) of this title, may, within 60 days after receiving such notice, file with the United States court of appeals for the circuit in which such State or unit of local government is located a petition for review of the action of the Secretary. A copy of the petition shall forthwith be transmitted to the Secretary; a copy shall also forthwith be transmitted to the Attorney General.

(b) RECORD.—The Secretary shall file in the court the record of the proceeding on which he based his action, as provided in 28 U.S.C. 2112. No objection to the action of the Secretary shall be considered by the court unless such objection has been urged before the Secretary.

(c) JURISDICTION OF COURT.—The court shall have jurisdiction to affirm or modify the action of the Secretary or to set it aside in whole or in part. The findings of fact by the Secretary, if supported by substantial evidence contained in the record, shall be conclusive. However, if any finding is not supported by substantial evidence contained in the record, the court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make

new or modified findings of fact and may modify his previous actions. He shall certify to the court the record of any further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence contained in the record.

(d) **REVIEW BY SUPREME COURT.**—The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in 28 U.S.C. 1254.

#### TITLE 5 UNITED STATES CODE

#### EXECUTIVE SCHEDULE PAY RATES

##### SEC. 5314. POSITIONS AT LEVEL III.

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(60) *Chairman, United States International Trade Commission.*

##### SEC. 5315. POSITIONS AT LEVEL IV.

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(24) Members, United States International Trade Commission.  
**[Chairman of the United States Tariff Commission.]**

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##### SEC. 5316. POSITIONS AT LEVEL V.

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**[(93) Members, United States Tariff Commission.]**

#### TITLE 13 UNITED STATE CODE

##### SEC. 301. COLLECTION AND PUBLICATION.

(a) The Secretary is authorized to collect information from all persons exporting from, or importing into, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control, and from all persons engaged in trade between the United States and such noncontiguous areas and between those areas, or from the owners, or operators of carriers engaged in such foreign commerce or trade, and shall compile and publish such information pertaining to exports, imports, trade, and transportation relating thereto, as he deems necessary or appropriate to enable him to foster, promote, develop, and further the commerce, domestic and foreign, of the United States and for other lawful purposes.

(b) *The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, on current monthly and cumulative bases, statistics on United States imports for consumption and United States exports by country and by product. Statistics on United States imports shall be submitted in accordance with the Tariff Schedules of the United States Annotated and general statistical headnote 1 thereof, in detail as follows:*

- (1) *net quantity;*
- (2) *United States customs value;*
- (3) *purchase price or its equivalent;*
- (4) *equivalent of arm's length value;*
- (5) *aggregate cost from port of exportation to United States port of entry;*

(6) a United States port of entry value comprised of (5) plus (4), if applicable, or, if not applicable, (5) plus (3); and

(7) for transactions where (3) and (4) are equal, the total value of such transactions.

The data for paragraphs (1), (2), (3), (5), and (6) shall be reported separately for nonrelated and related party transactions, and shall also be reported as a total of all transactions.

(c) In submitting any information under subsection (b) with respect to exports, the Secretary shall state separately from the total value of all exports—

(1) (A) the value of agricultural commodities exported under the Agricultural Trade Development and Assistance Act of 1954, as amended; and

(B) the total amount of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the value of goods exported under the Foreign Assistance Act of 1961.

(d) To assist the Secretary to carry out the provisions of this chapter—

(1) the Secretary of Agriculture shall furnish information to the Secretary concerning the value of agricultural commodities exported under provisions of the Agricultural Trade Development and Assistance Act of 1954, as amended, and the total amounts of all export subsidies paid to exporters by the United States under such Act for the exportation of such commodities; and

(2) the Secretary of State shall furnish information to the Secretary concerning the value of goods exported under the provisions of the Foreign Assistance Act of 1961, as amended



## IX. ADDITIONAL VIEWS OF MR. HARTKE

Three years ago, I stood before Congress and warned of the international trade and investment crisis which was then beginning to engulf us. At that time, I stated that disorders in our foreign trade "would threaten the livelihood of most Americans and the status of this country as a world industrial leader." Today, after two devaluations and the loss of thousands of domestic jobs, we are in the very throes of that crisis.

Joblessness has already reached an official 6 percent rate in October of 1974, with 333,000 manufacturing production jobs lost since October of 1973. New layoffs have been announced almost daily, increasing in manufacturing and service industries alike. As shutdowns in autos and auto parts cost jobs by the tens of thousands, the foreign expansion of these and other U.S.-based firms will be encouraged by the provisions of this bill.

For American workers and producers, the job losses of the past from the assault of imports and the flight of industry to protected nations abroad will be accelerated. The erosion of the industrial base from the combination of mounting imports and the outrush of technology and capital will be encouraged. This erosion of jobs was apparent in the 1960's in steel, in textiles, in shoes, in electronics, in stone, clay and glass, in all the basic productive industries of our nation. In the 1970's, the economy lost even more jobs for many reasons: steel employment dropped 5.8 percent between 1969 and 1973, employment in electrical equipment and supplies dropped another 1.2 percent after a massive loss in the 1960's; shoes and leather products employment dropped 13.5 percent, chemicals and allied products jobs down 2.9 percent, apparel and other textile products down 4.9 percent, aircraft and parts employment was down 36.1 percent. The list could go on and on.

There is little in the Committee's bill which provides hope that these problems will be solved. I have many objections to the bill the Committee has reported, but perhaps my most serious objection is that the measure does nothing to correct the tax subsidy the United States presently gives to foreign producers.

Our tax laws provide that foreign subsidiaries of U.S. corporations may credit their foreign taxes paid against the income tax liability of the parent corporation on foreign source income. Such credits claimed in 1970, and they are far greater today, mounted to \$4 billion. The case for crediting is that it secures tax neutrality with respect to the choice between domestic and foreign investment. Indeed, our crediting provisions far overshoot the mark because the foreign tax credit applies to local as well as central taxes, whereas State business income taxes in the United States may only be deducted.

Moreover, any excess foreign tax credits claimed may be carried forward for 5 years and back for 2 years.



One of the main reasons that the United States is now dependent upon the Arab world for our supplies of oil and gas is the increased profits realizable only abroad by the use of the foreign tax credit and deferral.

The multinational oil companies earned \$1.085 billion on mining and oil operations abroad in 1970, but because of their use of these tax loopholes, these firms paid not one cent in U.S. taxes on that income.

The Arabian American Oil Company (ARAMCO), which is a huge oil-producing consortium consisting of Exxon, Texaco, Mobil, Standard Oil of California, and the Saudi Arabian Government, is the world's largest oil petroleum producer and the world's biggest money-maker. In 1973, the company had profits after taxes of \$3.25 billion. How much did the United States get from them in taxes? Not one penny of income tax and a meager \$2.7 million in payroll taxes.

These are not exceptions, they are the rule. Manufacturing multinational corporations as well as the petroleum industry have benefited unfairly from the foreign tax credit. Direct U.S. foreign investments have a book value of over \$90 billion. Profits thereon are \$20 billion or some 20 percent of total profits of domestic corporations.

However, U.S. taxes paid on these foreign profits were only 5 percent or less than \$1 billion. The output produced by U.S. affiliates abroad is about \$200 billion with sales by manufacturing affiliates several times the level of U.S. manufactured exports.

Ownership of foreign affiliates, finally, is concentrated heavily in a small number of large corporations, the degree of concentration being higher even than for domestic production.

At present, our tax laws make an overseas investment more attractive than one in Indiana. For example, profits earned by a foreign subsidiary of an American firm are not taxed until they are repatriated. To the extent that the firm does pay taxes to a foreign government, these taxes count as a dollar-for-dollar credit against any Federal tax liability. Profits made in Indiana are taxed when earned. And taxes paid to the State of Indiana can only be taken as deduction against gross income rather than as a Federal tax credit.

The result of the present tax provisions is that the American people and the U.S. Treasury pay the bill for economic losses to the U.S. economy due to the expansion of multinational corporations abroad. Because of these tax provisions, American taxpayers will continue to help subsidize the treasuries of foreign countries and the expansion of U.S.-based firms abroad. Despite the fact that U.S. government agencies have now demonstrated the tax advantages of producing abroad instead of in the United States, the new bill fails to recognize this problem: U.S. multinationals paid about 5 percent in taxes in 1970; the U.S. corporate tax rate is 48 percent. Taxes paid to countries whose embargo on oil and threatened stoppages of other needed supplies are credited against the U.S. Treasury—a subsidy to those who jeopardize the American economy by withholding supplies, who add to U.S. inflation by hiking prices, and who provide walls behind which any firm can expand and export to the United States.

The Foreign Trade and Investment Act which I introduced in 1971 with my colleague, Representative James Burke of Massachusetts, and which we reintroduced in January of 1973, would eliminate these

problems. Taxes on overseas profits of foreign subsidiaries would be taxed as soon as these profits are earned. There would be no tax deferral. As for tax credits, the Hartke-Burke approach would eliminate them and require that foreign taxes on corporate profits be deductible instead of credited on their tax accounts. Thus, the same tax rules would apply to U.S. corporations based in the United States and abroad—so that a corporation would gain no net advantage by operating in foreign countries.

#### CONCLUSION

These are among the changes in the Committee bill which I propose as a way to address the real problems in the United States foreign trade position. When the Senate begins debate on trade reform, I intend to initiate a full discussion of these issues.

VANCE HARTKE.

